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BUSINESS MEETINGS

ON

ANIMAL WELFARE ACT AMENDMENTS OF 1976

S. 1941

September 11, 12, 17, and 25, October 8, and November 12,
1975, and January 21 and 22, 1976

Public Law 94-279

COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
SECOND SESSION



DECEMBER 1976



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ANIMAL WELFARE ACT AMENDMENTS OF 1976

THURSDAY, SEPTEMBER 11, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 2 p.m., pursuant to call, in room 1302, Longworth House Office Building, Hon. W. R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Melcher, Bergland, Litton, Nolan, Hightower, English, Sebelius, and Hagedorn.

Staff present: Robert M. Bor, counsel; John E. Hogan, associate counsel; John Baize, staff consultant, Subcommittee on Livestock and Grains; Norman Gay, staff consultant, Subcommittee on Oilseeds and Rice.

[Before considering H.R. 5808 the subcommittee had conducted a hearing on another matter.]

Mr. POAGE. We have spent considerable time with H.R. 5808, which is identical to H.R. 6583, amending the Animal Welfare Act.

[The bill H.R. 5808 and the reports from the U.S. Department of Agriculture, U.S. Postal Service, Interstate Commerce Commission, and Justice Department follow:]

94TH CONGRESS
1ST SESSION

H. R. 5808

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1975

Mr. FOLEY introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Act of August 24, 1966, as amended, to assure humane treatment of certain animals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Animal Welfare Act
4 Amendments of 1975".

5 SEC. 2. The Federal Laboratory Animal Welfare Act
6 of August 24, 1966 (80 Stat. 350, as amended by the
7 Animal Welfare Act of 1970, 84 Stat. 1560; 7 U.S.C.
8 2131-2155) is hereby further amended by adding the fol-
9 lowing at the end of the first section thereof: "It is also
10 essential for humane reasons to prohibit certain animal fight-
11 ing ventures. "The Congress hereby finds that animals and

1 activities which are regulated under this Act are either in
2 interstate or foreign commerce or substantially affect such
3 commerce or the free flow thereof, and that regulation of
4 animals and activities as provided in this Act is necessary to
5 prevent and eliminate burdens upon such commerce, to
6 effectively regulate such commerce, and to carry out the
7 objectives of this Act.”.

8 SEC. 3. Section 2 of such Act is amended by deleting
9 paragraph (d) defining “affecting commerce”; and by
10 amending paragraph (c) defining “commerce” by chang-
11 ing the last clause to read “or within any State, territory, or
12 possession, or the District of Columbia, or the Common-
13 wealth of Puerto Rico.”.

14 SEC. 4. Such Act is further amended by deleting the
15 term “affecting commerce,” from paragraphs (c) and (f)
16 of section 2 and sections 4, 11, and 12, wherever the quoted
17 term appears therein, and by substituting therefor the term
18 “in commerce,”; and by deleting, from paragraph (h) of
19 section 2, the phrase “or the intended distribution of which
20 affects commerce, or will affect commerce,” and substituting
21 therefor the phrase “or are intended to be moved in
22 commerce,”.

23 SEC. 5. Section 2 of such Act is further amended by
24 adding thereto two new paragraphs to read:

1 “(i) The term ‘intermediate handler’ means any per-
2 son (other than a dealer, research facility, exhibitor, any
3 person excluded from the definition of a dealer, research
4 facility, or exhibitor, an operator of an auction sale, or a
5 carrier, who is engaged in any business in which he receives
6 custody of animals in connection with their transportation
7 in commerce.

8 “(j) The term ‘carrier’ means the operator of any air-
9 line, railroad, shipping line, or other enterprise, which is
10 engaged in the business of transporting any animals for hire.”.

11 SEC. 6. Section 6 of such Act is amended by inserting
12 after the term “research facility”, a comma and the term
13 “every intermediate handler, every carrier,”.

14 SEC. 7. Section 9 of such Act is amended by inserting
15 after the term “Section 12 of this Act,” the term “or an
16 intermediate handler, or a carrier,” and by deleting the term
17 “or an operator of an auction sale as well as of such person”
18 at the end of section 9 and substituting therefor the following
19 term: “operator of an auction sale, intermediate handler, or
20 carrier, as well as of such person.”.

21 SEC. 8. Section 10 of such Act is amended by deleting
22 the phrase “upon forms supplied by the Secretary” from the
23 first sentence and by adding after the second sentence a new
24 sentence to read as follows:

1 “SEC. 10. Intermediate handlers and carriers shall make
2 and retain for such reasonable period of time as the Secretary
3 may prescribe, such records with respect to the transporta-
4 tion, receiving, handling, and delivering of animals as the
5 Secretary may prescribe.”.

6 SEC. 9. Section 13 of such Act is amended by designat-
7 ing the provisions thereof as paragraph (a) and by adding,
8 after the second sentence therein, a new sentence to read:
9 “The Secretary shall also promulgate standards to govern
10 the transportation in commerce, and the handling, care, and
11 treatment in connection therewith, by intermediate handlers,
12 air carriers, or other carriers, of animals consigned by any
13 dealer, research, facility, exhibitor, operator of an auction
14 sale, or other person, or any department, agency, or instru-
15 mentality of the United States, for transportation in com-
16 merce. The standards shall include such requirements with
17 respect to containers, feed, water, rest, ventilation, tempera-
18 ture, handling, adequate veterinary care, and other factors as
19 the Secretary determines are relevant in assuring humane
20 treatment of animals in the course of their transportation in
21 commerce.”.

22 SEC. 10. Section 13 of such Act is further amended by
23 adding at the end thereof new paragraphs (b), (c), and
24 (d) to read:

25 “(b) No animal, shall be delivered by any dealer,

1 research facility, exhibitor, operator of an auction sale, or
2 department, agency, or instrumentality of the United States,
3 to any intermediate handler or carrier for transportation in
4 commerce, or received by any such handler or carrier for such
5 transportation from any such person, department, agency, or
6 instrumentality, unless the animal is accompanied by a certifi-
7 cate issued by a veterinarian licensed to practice veterinary
8 medicine, certifying that he inspected the animal on a speci-
9 fied date, which shall not be more than ten days before such
10 delivery, and, when so inspected, the animal was sound and
11 healthy. Such certificates received by the intermediate han-
12 dlers and the carriers shall be retained by them, as provided
13 by regulations of the Secretary, in accordance with section 10
14 of this Act.

15 “(c) No dogs or cats, or additional kinds or classes of
16 animals designated by regulation of the Secretary, shall be
17 delivered by any person to any intermediate handler or car-
18 rier for transportation in commerce except to registered re-
19 search facilities if they are less than eight weeks of age, or
20 such other age as the Secretary may by regulation prescribe.
21 The Secretary shall designate additional kinds and classes of
22 animals and may prescribe ages different than eight weeks
23 for particular kinds or classes of dogs, cats, or designated
24 animals, for the purposes of this section, when he determines
25 that such action is necessary or adequate to assure their

1 humane treatment in connection with their transportation in
2 commerce.

3 “(d) No intermediate handler or carrier involved in
4 the transportation of any animal in commerce shall partici-
5 pate in any arrangement or engage in any practice under
6 which the cost of such animal or the cost of the transporta-
7 tion of such animal is to be paid and collected upon delivery
8 of the animal to the consignee, unless the consigner guaran-
9 tees in writing the payment of transportation charges, includ-
10 ing, where necessary, both the return transportation charges
11 and an amount sufficient to reimburse the carrier for all out-
12 of-pocket expenses incurred for the care, feeding, and storage
13 of any live creatures.”

14 SEC. 11. Section 15 of such Act is amended by inserting
15 after the term “exhibition” in the first sentence, a comma
16 and the term “or administration of statutes regulating the
17 transportation in commerce or handling in connection there-
18 with of any animals”, and by adding the following at the end
19 of the sentence: “Before promulgating any standard govern-
20 ing the air transportation and handling in connection there-
21 with, of animals, the Secretary shall consult with the Secre-
22 tary of Transportation who shall have the authority to
23 disapprove any such standard if he notifies the Secretary,
24 within thirty days after such consultation, that changes in its
25 provisions are necessary in the interest of flight safety.”

1 SEC. 12. Paragraph (a) of section 16 of such Act is
2 amended by inserting the term "intermediate handler, car-
3 rier," in the first sentence after the term "exhibitor,," each
4 time the latter term appears in the sentence; by inserting
5 before the period in the second sentence, a comma and the
6 term "or (5) such animal is held by an intermediate handler
7 or a carrier" and by deleting the term "or" before the term
8 "(4)" in the third sentence.

9 SEC. 13. Section 19 of such Act is amended by adding
10 at the end thereof the following new paragraph (d) :

11 "(d) Any intermediate handler or carrier that violates
12 any provision of section 13 of this Act or any standard
13 promulgated thereunder may be assessed a civil penalty by
14 the Secretary of not more than \$1,000 for each such viola-
15 tion. Each violation shall be a separate offense. No penalty
16 shall be assessed unless such person is given notice and
17 opportunity for a hearing with respect to the alleged viola-
18 tion, and the order of the Secretary assessing a penalty
19 shall be final and conclusive unless the affected person files
20 an appeal from the Secretary's order with the appropriate
21 United States court of appeals. Such court shall have ex-
22 clusive jurisdiction to enjoin, set aside, suspend (in whole
23 or in part), or to determine the validity of the Secretary's
24 order, and the provisions of sections 2341, 2343 through
25 2350 of title 28, United States Code, shall be applicable

1 to such appeals and orders. Any such civil penalty may be
 2 compromised by the Secretary. Upon any failure to pay the
 3 penalty assessed by a final order under this section, the
 4 Secretary shall request the Attorney General to institute a
 5 civil action in a district court of the United States or other
 6 United States court for any district in which such person
 7 is found or resides or transmits business, to collect the pen-
 8 alty, and such court shall have jurisdiction to hear and
 9 decide any such action.”

10 SEC. 14. Section 24 of such Act is amended by insert-
 11 ing a comma and the term “intermediate handlers, and car-
 12 riers” after the term “dealers” in the third sentence; and by
 13 adding a comma and the following provisions before the pe-
 14 riod at the end of the first sentence: “except that the regu-
 15 lations relating to intermediate handlers and carriers shall
 16 be prescribed no later than nine months from the date of
 17 enactment of the ‘Animal Welfare Act Amendments of
 18 1975’.”

19 SEC. 15. Section 25 of such Act is amended by inserting
 20 after subsection (3) the following new subsection:

21 “(4) recommendations and conclusions concern-
 22 ing the aircraft environment as it relates to the carriage
 23 of live animals in air transportation.”

24 SEC. 16. (a) Such Act is amended by adding at the
 25 end thereof the following new section:

1 “SEC. 26. (a) It shall be unlawful for any person to
2 knowingly sponsor, or exhibit an animal in any animal fight-
3 ing venture to which any animal was moved in interstate or
4 foreign commerce.

5 “(b) It shall be unlawful for any person to sell, buy,
6 transport, or deliver to another person or receive from an-
7 other person for purposes of transportation, in interstate or
8 foreign commerce any dog or other animal for purposes of
9 having the dog or other animal participate in an animal
10 fighting venture.

11 “(c) It shall be unlawful for any person to knowingly
12 use the mail service of the United States Postal Service or
13 any interstate instrumentality for purposes of promoting or
14 in any other manner furthering an animal fighting venture.
15 Section 3001 (a) of title 39, United States Code, is amended
16 by adding immediately after the words “title 18” a comma
17 and the words “or section 26 of the Federal Laboratory
18 Animal Welfare Act”.

19 “(d) Any person who violates subsection (a), (b),
20 or (c) shall be fined not more than \$5,000 or imprisoned
21 for not more than one year, or both, for each such violation.

22 “(e) The Secretary or any other person authorized by
23 him shall make such investigations as the Secretary deems
24 necessary to determine whether any person has violated or
25 is violating any provision of this section, and the Secretary

1 may obtain the assistance of the Federal Bureau of Investiga-
2 tion, the Department of the Treasury, or other law enforce-
3 ment agencies of the United States, and State and local
4 governmental agencies, in the conduct of such investigations,
5 under cooperative agreements with such agencies. A warrant
6 to search for and seize any animal which there is probable
7 cause to believe was involved in any violation of this section
8 may be issued by any judge of the United States or of a State
9 court of record or by a United States commissioner within
10 the district wherein the animal sought is located. Any United
11 States marshal or any person authorized under this section
12 to conduct investigations may apply for and execute any such
13 warrant, and any animal seized under such a warrant shall
14 be held by the United States marshal or other authorized
15 person pending disposition thereof by the court in accordance
16 with this paragraph (e). Necessary care including veterinary
17 treatment shall be provided while the animals are so held in
18 custody. Any animal involved in any violation of this section
19 shall be liable to be proceeded against and forfeited to the
20 United States at any time on complaint filed in any United
21 States district court or other court of the United States for
22 any jurisdiction in which the animal is found and upon a
23 judgment of forfeiture shall be disposed of by sale for lawful
24 purposes or by other humane means, as the court may direct.
25 Costs incurred by the United States for care of animals seized

and forfeited under this section shall be recoverable from the owner of the animals if he appears in such forfeiture proceeding or in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

“(f) For purposes of this section—

(1) the term ‘animal fighting venture’ means any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment;

“(2) the term ‘interstate or foreign commerce’ means—

“(A) any movement between any place in a State to any place in another State or between places in the same State through another State; or

“(B) any movement from a foreign country into any State,

“(3) the term ‘interstate instrumentality’ means telegraph, telephone, radio, or television operating in interstate or foreign commerce;

“(4) the term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

“(5) the term ‘animal’ means any live dog or other mammal, except man; and

1 “(6) the conduct by any person of any activity
2 prohibited by this section shall not render such person
3 subject to the other sections of this act as a dealer,
4 exhibitor, or otherwise.

5 “(g) The provisions of this Act shall not supersede or
6 otherwise invalidate any such State, local, or municipal leg-
7 islation or ordinance relating to animal fighting ventures ex-
8 cept in case of a direct and irreconcilable conflict between
9 any requirements thereunder and this Act or any rule, regu-
10 lation, or standard hereunder.”.

11 SEC. 18. If any provision of this Act or of the amend-
12 ments made hereby or the application thereof to any person
13 or circumstances is held invalid, the validity of the remainder
14 of the Act and the remaining amendments and of the applica-
15 tion of such provision to other persons and circumstances
16 shall not be affected thereby.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., September 25, 1975.

HON. THOMAS S. FOLEY,
*Chairman, Committee on Agriculture,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 5808, a bill "To amend the Act of August 24, 1966, as amended, to assure humane treatment of certain animals, and for other purposes."

This Department does not favor enactment of the bill.

The bill would amend the Laboratory Animal Welfare Act, as amended, to provide further measures to assure humane treatment of animals, as defined in the Act. The bill expands the scope of the Act to include "intermediate handlers" and "carriers," clarifies coverage with respect to intrastate commerce, and authorizes the Secretary of Agriculture to promulgate standards governing the transportation in commerce and related handling by such intermediate handlers and carriers of animals received from dealers or other persons or agencies regulated under the present Act. It also prohibits delivery by any person to an intermediate handler or carrier for transportation of certain animals before they reach a minimum age, and prohibits specified collect-on-delivery arrangements unless payment of transportation charges, including, where necessary, return transportation charges and other expenses incurred by the carrier are guaranteed in writing by the consignor. The bill requires that animals to be delivered by any dealer or other presently regulated person or agency to any intermediate handler or carrier for transportation in commerce be accompanied by a certificate issued by a licensed veterinarian certifying that the animals are sound and healthy. The bill provides for a civil penalty, not to exceed \$1,000, for violation of any of the provisions of section 13 of the Act, or any standard promulgated under the Act. It also requires consultation with the Secretary of Transportation in promulgating the standards governing air transportation of animals.

The bill adds a new section to the Act making it a criminal offense for any person to knowingly sponsor or exhibit an animal in a fighting venture to which any animal was moved in interstate or foreign commerce. It also makes it unlawful for any person to sell, buy, transport or deliver, or receive for the purposes of transportation, in interstate or foreign commerce any dog or other animal for the purposes of having it participate in a fighting venture. In addition, the bill makes it unlawful to knowingly use the U.S. Postal Service or any interstate instrumentality or promote, or in any other manner further, such a venture.

There are available alternative measures which can achieve many of the objectives of the bill. These alternatives should be fully explored and tested before any additional legislative action is taken.

Representatives of the animal carriers, freight forwarders, animal dealers, humane societies, animal science professionals, State and Federal agencies, and other interested parties could collectively develop and agree on animal transportation standards and procedures that would be acceptable to all and which could be followed on a voluntary basis. An appropriate forum for this would be the National Council on Animal Transportation, which has representation from nearly all of the interested parties in animal transportation.

The Civil Aeronautics Board has initiated administrative proceedings relating to the rules and practices for the acceptance and carriage of live animals in domestic air freight transportation. Following these proceedings, the Department could provide guidelines which the interested and involved public and the animal carriers could use to provide a uniform base for transporting animals.

Another focal point for effective activity would be in the Interagency Committee on Live Animal Transportation formed at the recommendation of the House Committee on Government Operations. The original purpose of the Committee was to cover only air transportation of animals. Its charter could be broadened to include other forms of transportation, and its membership could be expanded to include other transportation regulatory agencies such as the Interstate Commerce Commission. The Interagency Committee held an organizational meeting on October 30, 1974. It was decided that rather than duplicate the efforts and information being assimilated by the Civil Aeronautics Board's administrative hearing, the Committee would wait until the information from the hearing could be assembled and summarized before determining a proper course of action. A meeting of the Committee will be held this year, subsequent to the CAB hearing, and improvement in the humane care and treatment of animals during transportation will be actively pursued.

Concerning the animal fighting provisions of H.R. 5808, the Department strongly opposes the holding of such events. However, we do not have the kind of trained manpower and other resources necessary to prohibit animal fights or arrest the involved persons. In our view, this is a proper responsibility of State and local law enforcement agencies and, with few exceptions, laws exist at that level, which would permit effective dealing with this problem.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD L. FELTNER,
Assistant Secretary.

UNITED STATES POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., May 15, 1975.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of the Postal Service on H.R. 5808, the proposed "Animal Welfare Act Amendments of 1975". This bill would further amend the Federal Animal Welfare Act of 1966, as amended by the Animal Welfare Act of 1970 (7 U.S.C. § § 2131-2155), to prescribe additional regulations and record-keeping requirements for commercial carriers of certain warm-blooded animals, and to prohibit certain fighting ventures.

The basic purpose of sections 1 through 15 of this legislation is to enhance the welfare of animals transported in interstate commerce for use in research facilities, or for exhibition purposes, or for use as pets. However, the proposed amendments, like the existing statutes, would not apply to: * * * farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. 7 U.S.C. § 2132(g).

Since the only warm-blooded animals that may be carried in the mails are live day-old poultry, 39 C.F.R. § 124.3 (c) (2) (ii), it is clear that transportation of such farm animals by mail would not be covered by this legislation. In our opinion, there is no need for such coverage, because the welfare of day-old poultry in the mails is insured by detailed Postal Service regulations which exhibit a high degree of sensitivity to that welfare. 39 C.F.R. § 124.3 (c) (1) (i) through (xiv). We would oppose any amendment of the bill to apply the restrictions of 7 U.S.C. § 2131, *et seq.*, to the shipment of baby poultry from hatchery to farm through the mail, which has been an important and highly-regulated function of the Postal Service for many years, or to otherwise limit the availability of this service to farmers and other rural Americans.

Section 16 of H.R. 5808 would add a new section 26 to the Federal Laboratory Animal Welfare Act imposing criminal penalties on those engaged in certain animal fighting ventures. We note that proposed section 26(c) would specifically make it unlawful for any person "to knowingly use the mail service of the United States Postal Service" for promoting or furthering an animal fighting venture. Proposed section 26(c) also contains language, suggested in our report on similar legislation in the last Congress, H.R. 16738, 93d Cong., 2d Sess. (1974), which would amend 39 U.S.C. § 3001(a), a postal mailability statute, to enable the Postal Service to seize and dispose of animal fighting publications and advertisements placed in the mails.

In order to avoid ambiguity and insure that this legislation, if enacted, is given full effect, we suggest that the language now contained in lines 15 through 18 on page 9 of H.R. 5808 be set forth as a separate section of H.R. 5808 and not as part of a new section of the Federal Laboratory Animal Welfare Act. This technical change will facilitate the codification of the mailability provision of H.R. 5808 and promote the effectiveness of Federal law prohibiting animal fighting ventures.

We are unable, with any degree of precision, or reasonable guaranty of accuracy, to estimate the costs of this legislation over the next five years. However, we note that the enactment of new criminal statutes invariably impose additional investigatory, prosecutorial, and judicial costs on the criminal justice system. In most cases these costs must be met from the pool of available executive

and judicial resources, sometimes detracting from the expeditions and thorough enforcement of previously existing criminal statutes. The exact costs of H.R. 5808 will depend upon a number of factors, including the number of illegal animal fighting operations, the degree of public support for enforcement of the law, and the ease with which clandestine animal fights can be conducted and detected. Obviously, these factors are exceedingly difficult to quantify.

As we indicated to you in our report on H.R. 16738, we believe that Congress is best equipped to decide whether it is desirable as a matter of public policy to apply the sanctions of Federal criminal law to those engaged in organized animal fighting activity, and whether there is adequate justification for expending the finite resources of Federal law enforcement agencies in this area. Accordingly, we do not oppose the enactment of legislation such as H.R. 5808.

W. ALLEN SANDERS,
Assistant General Counsel.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., August 11, 1975.

HON. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, House of Representatives,
Washington, D.C.

DEAR CHAIRMAN FOLEY: This replies to your request for our views on H.R. 5808, the "Animal Welfare Act Amendments of 1975."

The Animal Welfare Act, as found in 7 U.S.C. 2131 *et. seq.*, provides that the Secretary of Agriculture shall establish regulations for the humane treatment of animals purchased, handled, sold, and transported by dealers to research facilities or exhibitors in interstate commerce. The Act further requires the licensing of dealers and exhibitors as well as the registration of research facilities. It is unlawful under the Act for any research facility to purchase any dog or cat from an unlicensed dealer. Records are required to be kept of all sales or transportation of animals by dealers, exhibitors, and research facilities. The Secretary has been granted investigatory powers and a violation could result in civil penalties or a criminal fine. Common carriers are specifically excluded from the Act.

The original purpose of the Animal Welfare Act was to regulate the supplying and treatment of animals being sold to research facilities. In 1966, Congress learned that many hundreds of animals were being supplied to such research facilities yearly. In order to meet the demand many inhumane dealers began to steal pets such as dogs and cats from their owners for resale. These animals often were ill-treated by the dealers and research facilities. The Animal Welfare Act was passed to curb these abuses and thefts of pets. *See*, 1966 U.S. Code Cong. and Adm. News, p. 2635.

This bill would create the Animal Welfare Act Amendments of 1975. The term "commerce" would be expanded to include transportation within the states. Also, the bill now will subject intermediate handlers, and carriers to the record-keeping requirements. The Secretary will be given the further power to provide regulations regarding the proper treatment of animals being transported by carriers. The amendments will provide for civil penalties for violation of these regulations.

Section 5 of the bill defines the term "carrier" to mean the "operator of any airline, railroad, shipping line, or other enterprise, which is engaged in the business of transporting any animals for hire." Obviously, this definition will include a motor carrier transporting animals, however, for purposes of clarity, section 5(j) of the bill should be amended to include specifically motor common and contract carriers. Clearly, the intent of the bill is to cover motor transportation, and this amendment would remove any doubt as to its applicability. A significant portion of this traffic moves by motor carrier.

Section 10 adds new sections 13(b), (c), and (d) to the Animal Welfare Act. New Section 13(d), by prohibiting C. O. D. and similar shipping arrangements, except in certain circumstances, directly affects the rights and obligations of shippers and carriers under the Interstate Commerce Act. These types of shipping arrangements are prohibited unless the consigner guarantees in writing the payment of transportation charges including where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for all out-of-pocket expenses incurred for the care, feeding, and storage of any live creatures being transported by carriers. The amendments will provide for civil penalties for violation of these regulations.

Before attaching such conditions to C. O. D. traffic, no doubt the Subcommittee will compile an exhaustive record as to the need for such action, and, if such action is required, this Commission will cooperate by enforcing the partial ban on this traffic. Notwithstanding the proposed partial prohibition against C. O. D. and similar shipping arrangements, even if the shipment is prepared there may arise instances in which the animals being shipped may be returned to the originating carrier or shipper because of the inability of the originating carrier to arrange for movement beyond its lines. Section 216(c) of the Interstate Commerce Act provides that motor common carriers may establish reasonable through routes and joint rates with other such carriers or other specified common carriers. If we had authority, which we have requested from Congress, to require the establishment by motor carriers of joint rates and through routes, the problem referred to above could be obviated.

Section 15 of the Act presently requires the Secretary to consult and cooperate with all Federal agencies concerned with the welfare of animals. Section 11 of the bill adds a provision requiring the Secretary to consult with agencies concerned with regulation of transportation. The bill specifically requires the Secretary to consult with the Secretary of Transportation who shall have the authority to disapprove any standard promulgated by the Secretary of Agriculture governing air transportation if he finds disapproval necessary for flight safety. A specific provision could be added granting the regulatory agencies the right to disapprove any standard which interferes with their statutory regulatory goals.

Section 19 of the Act is to be amended to allow the Secretary to assess a civil penalty of not more than \$1,000 for each violation. The violator will be given an opportunity to be heard but the Secretary's assessment shall be final unless an appeal is filed with the appropriate United States Court of Appeals. The Attorney General is granted authority to institute a civil action to collect such penalty if not paid.

If amended, section 19 will present some problems. First, it establishes a maximum penalty of \$1,000 for each violation but provides for no minimum penalty although one is provided for in the original "28 Hour" statute (45 U.S.C. 71-74). A minimum penalty is desirable in order to prevent an administrator or judge from abusing his discretion in assessing a ridiculously low penalty. Second, the section states that each violation shall be a separate offense. It is not clear if a violation is one shipment or one inhumane act in the treatment of one animal in violation of the regulations of the Secretary. This point should be clarified.

We should also note that on sheet 11, lines 10-16, the draft bill seeks to define the terms "interstate commerce" and "foreign commerce." We would suggest that the definitions should specifically identify interstate commerce and foreign commerce in a manner similar to the definitions in section 203 of the Interstate Commerce Act (49 U.S.C. 303). Furthermore, under the present definition, it appears that while the proposed bill would govern the transportation of animals "from a foreign country into any State," it would exempt transportation "from a State for export to a foreign country."

Finally, the bill would add a new section 26 to the Animal Welfare Act which would prohibit certain activities in connection with animal fighting ventures. It would make it unlawful for any person knowingly to sponsor or exhibit an animal moved in interstate commerce in any animal fighting venture or knowingly to use the mails for the purpose of promoting such a venture. New section 26(b) would make it unlawful for any person to sell, buy, transport, deliver, or receive a dog or other animal for the purpose of having the animal participate in a fighting venture. The word "knowingly" which is used in delineating the other offenses is not included in proposed section 26(b). We believe that the word "knowingly" should be included in this section of the legislation. It would be unreasonably burdensome to require carriers to be informed of the purposes of the shipper in transporting the animal and would be unfair to the carriers to penalize them for performing these services when they had no knowledge of the purposes of the shipper.

In conclusion, the Commission has no objection to the enactment of H.R. 5808, if the above suggestions are adopted.

Thank you for the opportunity to comment upon this legislation.

Sincerely yours,

GEORGE M. STAFFORD,
Chairman.

DEPARTMENT OF JUSTICE,
 ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS,
 Washington, D.C., October 8, 1975.

HON. THOMAS S. FOLEY,
 Chairman, Agriculture Committee,
 House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Department's views on H.R. 5808, a bill "To amend the Act of August 24, 1966, as amended, to assure humane treatment of certain animals, and for other purposes."

This bill would amend the Act of August 24, 1966, as amended, by providing numerous measures aimed at assuring humane treatment of certain animals. The provisions of the bill which are of particular interest to the Department of Justice are contained in sections 13 and 16.

Section 13(d) of the bill provides for the addition of a new paragraph (d) at the end of Section 19 of the Act, providing for the assessment by the Secretary of Agriculture of a civil penalty of not more than \$1,000 for each violation of any intermediate handler or carrier of any provision of Section 13 of the Act. It provides further for notice to the alleged offender and an opportunity for a hearing with respect to the alleged violation. The order of the Secretary assessing a penalty shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. These courts are granted exclusive jurisdiction under the Act to enjoin, set aside, suspend in whole or in part, or determine the validity of the Secretary's order. The provisions of 28 U.S.C. §§ 2341 and 2343 through 2350 are made applicable to such appeals and orders. This Section also authorizes the Secretary to compromise any such civil penalty and, upon failure of payment of the penalty assessed by a final order under this Section, requires the Secretary to request the Attorney General to institute a civil action in any appropriate United States District Court to collect the penalty.

Section 16(d) provides that any person who violates subsection (a), (b), or (c) thereof shall be fined not more than \$5,000 or imprisoned for not more than one year, or both, for each such violation. Subsections (a), (b), and (c), respectively, prohibit the knowing sponsorship or exhibition of an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce; the selling, buying, transporting, or delivering of a dog or other animal for such purposes; or the use of the United States or any interstate instrumentality for promoting such animal fighting venture. Subsection (e) empowers the Secretary or any other person authorized by him to make such investigation as necessary to determine whether a violation has occurred or is in process and permits the entering into cooperative agreements in connection with the conduct of such investigation, with the Federal Bureau of Investigation, the Department of Treasury, or other law enforcement agencies of the United States, as well as state and local governmental agencies. This subsection further provides for the issuance of a warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this Section. Such warrants may be issued by any judge of the United States or a United States Commissioner or by a judge of any state court of record in the district where any animal sought is located.

Technically, the penalty provisions seem incompatible. For example, the maximum civil penalty is \$1,000 while the fine for criminal violations is \$5,000, in lieu of or in addition to a one year imprisonment provision. This seems high in comparison with other penalty provisions of this Act.

Aside from any technical infirmities with the bill, the Department strongly feels that prohibitions against dog or animal fighting ventures should be a matter of state rather than federal law. Traditionally in our form of government the responsibility for the maintenance of law and order has been lodged with state and local authorities, Federal jurisdiction has been for the most part restricted to matters directly involving a function of the federal government or otherwise beyond the normal enforcement capability of such state or local authorities. There appears to be no sound basis for the view that federal intervention in this area could more effectively handle such investigations or have a more deterrent effect in preventing the type of offenses contained in H.R. 5808.

Concerning the various other provisions of the bill dealing with the humane treatment of animals, the Department defers to the Department of Agriculture.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MICHAEL M. UHLMANN,
Assistant Attorney General.

MR. LITTON. Mr. Chairman, I must apologize for not being present for all of the testimony on the bill.

Did anyone in the Department of Agriculture have any recommendations or amendments to the proposal?

MR. POAGE. I don't have anything they offered to make changes. Did they?

MR. BOR. Mr. Chairman, I think the Department of Agriculture was opposed to this bill. The CAB and the National Institute of Health made some comments and some recommendations for changes in the bill, and there were recommendations for changes made by some others.

One of the things that the NIH was concerned with related to the types of animals that would be covered by the provisions of this bill. They thought some of the smaller animals like mice and rats should not be subject to the requirements for veterinarian inspection that applied to, say, animals like cats and dogs. Some other witnesses that testified would add to the category of the mice and rats, animals like guinea pigs or other types of rodents.

NIH and some other witnesses also made some suggestions as to a change in terminology that should be provided in the certification of a veterinarian.

The provision that appears in the bill requires that the certifications state the animal was sound and healthy. The recommendations by some of the people would have changed that to read that the animal appeared to be free of any infectious disease or physical abnormality which would endanger the animal during transit—something like that. There was a slight difference in wording, between some of the witnesses.

MR. POAGE. Personally I don't see any reason in the world for keeping that requirement for veterinarians' certificate on animals before shipping. It becomes exactly the same sort of a racket that we had back in prohibition days when, if you wanted a drink, you got a doctor's certificate as to your bad health. And then instead of going to a bootlegger you went to a drugstore.

What possible advantage is there going to be to it?

MR. BERGLAND. There are all sorts of State law addressed to this problem of interstate shipment of domestic animals, wild animals, pets, or livestock. By and large, these States have built up their body of law governing what they will accept on the basis of a veterinarian inspecting animals at the point of shipment.

That places a responsibility at the shipping point to avoid spreading disease, a basic concept.

While it is a headache to those concerned with making a shipment, it has been found over the years to be necessary. I think we would be striking a real blow at the States' prerogative of only allowing entrance of livestock, or in this case pets, wild animals, on the basis of somebody saying at the start that they are helping.

I think it is a necessary procedure. I don't think we should attempt to take it out because we would be doing a great harm to the States involved.

Mr. POAGE. What do you mean? If the State of Oklahoma had such a law, would you say that the State of Oklahoma couldn't enforce that law within their State?

Mr. BERGLAND. We make it very difficult for them because it would become a responsibility of the State to block an interstate shipment for not having complied with their requirements. That is extremely difficult. The procedure we have is that the State requires the prior inspection prior to shipment.

I think in this regard this bill only follows a procedure that has been accepted and frankly does work even though it does place the onus on the person or the company making the interstate shipment.

Mr. LITTON. The bill is not restricted to airlines. It is to anyone who is in the business of hauling livestock for hire.

Mr. POAGE. This is something I want to know about this bill.

Mr. LITTON. I refer to page 3, line 8; "The term 'carrier' means the operator of any airline, railroad, shipping line, or other enterprise, which is engaged in the business of transporting any animals for hire."

Then, going to page 5, on this matter of the veterinarian certificate—line 9 states that it shall be issued "not more than 10 days before such delivery" that the animal was found to be healthy and sound. I direct this question to the gentleman from Montana. As you read this, would this mean that if a person were in the business of raising livestock in the State of North Dakota for sale through an auction ring in Minnesota, that livestock would have to be inspected at the ranch 10 days before it was loaded and commissioned for sale?

Mr. BOR. If I may interject. This bill is an amendment to the Animal Welfare Act which defines animals to exclude livestock and horses, so that these requirements would not be applicable to livestock.

Mr. LITTON. They would not be applicable to livestock or horses?

Mr. BOR. That is right. And one of the questions that did come up during the course of testimony is that there was some testimony, first by Congressman McEwen and again by representatives of the American Horse Association recommending that the act be applied to certain categories of horses.

But as it now reads, it does not apply to livestock or horses.

Mr. LITTON. The testimony that was received with Mr. McEwen and others was that certain classes of horses should be included. Did they define those classes?

Not necessarily sporting horses to be loaded on a trailer to be brought to an event?

Mr. BOR. Well, testimony of Mr. McEwen. I think, would have covered those horses; whereas, the American Horse Association would have limited the coverage to horses that would be transported for slaughter.

Mr. POAGE. The bill doesn't touch either one, does it?

Mr. BOR. This bill as it now reads does not. These were additional suggestions. Mr. McEwen had his own bill which he was testifying for.

Mr. HIGHTOWER. Mr. Chairman, the counsel was saying the whole bill does not apply?

Mr. BOR. Does not apply to all horses.

As it now reads, it has no application to traveling horses.

Mr. HOGAN. There is an exemption in the existing law and the bill doesn't change that.

Mr. BOR. This bill would amend the current statute, the current Animal Welfare Act, and in the Animal Welfare Act they define animals as excluding livestock and horses.

Mr. HIGHTOWER. There is a substantial amount of difference in horses.

Mr. POAGE. That is correct. We can include any part of it or leave it all out, if we want to, without including horses. Certain of the people who testified wanted to include only horses that were being moved out of the United States for slaughter, and I cannot understand what difference it makes whether you move them out for slaughter or for feed. A horse should be protected from unnecessary cruelty while he is being moved. But other witnesses didn't want to include any other horses than those. Some wanted to include all horses. And this bill includes all types.

It doesn't relate to private carriers, as I understand it.

Mr. NOLAN. The term animal as defined, Mr. Chairman, in the existing law excludes horses not used for research purposes, and other farm animals such as, but not limited to, livestock or poultry used or intended for use as food or fiber.

Mr. POAGE. I am asking for the definition of carrier. Is it limited to common carriers? We need to know that, I think. I understand that this relates to only common carriers.

Mr. BOR. There is a definition of the term carrier as meaning the operator of any airline, railroad, shipping line, or other enterprise which is engaged in the business of transporting any animals for hire. That would include a private carrier as well as a common carrier.

Mr. POAGE. It includes everything except a person carrying his own animals, doesn't it?

Mr. BOR. That is correct.

Mr. POAGE. That is what they are cutting out. There is no protection in this bill for an animal that is carried in a vehicle owned and operated by the owner of the animal. In other words, if you're carrying dogs in your own van, there's no protection.

Mr. BERGLAND. Might I ask counsel a question here?

I have been scanning this language. I'm sorry I don't understand it. Does this seem to direct an airline terminal such as National to have facilities of a certain type to receive these animals?

Mr. BOR. It puts a burden on the person who is delivering the animal to the airline to provide a kind of certification.

Mr. BERGLAND. It doesn't require a central point for dogs to be held at National or any other airport?

Mr. POAGE. The bell has rung. Before anybody leaves, may I inform the guests that the Chair is going to try to expedite this and not have to come back; otherwise, we might as well put this off until next week or next month or some other time. The Chair would request that all members stay. If the members will stay, we will try to move it. If the

members won't come back, we will move it to another time. If we let this thing drag another few weeks, you are going to take another 2 weeks catching up on it.

Mr. BERGLAND. This may be the last question. Maybe nobody else has a question.

Mr. BOR. One of the provisions in the bill would require the Secretary to establish standards for places like National Airport and for other carriers to establish facilities with respect to containers, feed, water, rest, ventilation, temperature, handling, adequate veterinary care, and other things to assure humane treatment of animals.

Mr. POAGE. We will have to go to the rollcall now. I hope you will come back, because I think it will save everybody time.

There are several questions that have to be decided one way or another, such as: whether you want to include horses in the bill; do you want to require certification of all animals being held; do you want to put requirements on the common carriers.

[Short recess taken.]

[Following the recess, a quorum was not present.]

Mr. POAGE. The committee will stand in recess until 10 o'clock in the morning.

[Whereupon, at 3:30 p.m., the meeting adjourned.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

FRIDAY, SEPTEMBER 12, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:30 a.m., pursuant to call, in room 1301, Longworth House Office Building, Hon. W. R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Melcher, Bergland, Weaver, Bedell, English, Hagedorn.

Staff present: Robert M. Bor, counsel; Hyde H. Murray, counsel; John E. Hogan, associate counsel; Anita Brown, staff assistant.

Mr. POAGE. The subcommittee will come to order.

We are here today to consider legislation to amend the act of August 24, 1966, for purposes of prohibiting the shipment in interstate commerce of dogs intended to be used to fight other dogs for purposes of sport, wagering, or entertainment.

We are here today, further, to consider legislation to amend the act of August 24, 1966, to assure humane treatment of certain animals.

We are here today, further, to consider legislation to authorize the Secretary of Agriculture to regulate the transportation of horses in commerce.

And we are here today, further, to consider legislation to amend the Federal law relating to the care and treatment of animals, to broaden the categories of persons regulated under such law, to assure that birds in pet stores and zoos are protected, and to increase protection for animals in transit.

Would the Clerk please inform the Chair as to whether or not a quorum is present.

The CLERK. Mr. Chairman, a quorum is not present at this time.

Mr. POAGE. The Chair recognizes the fact that we do not have a quorum present at this time.

I think that we will recess the subcommittee meeting for a few minutes to see if a quorum develops.

Is there any objection?

[No response.]

Mr. POAGE. Hearing no objection, the subcommittee will stand in recess for the next few minutes.

We will see what develops. In the meantime, we can examine this legislation to familiarize those members who are present at this time with the form and substance of these bills.

I have some questions of counsel at this time. Let us stand in recess. [Whereupon, a short recess was taken, during which an off-the-record discussion ensued.]

Mr. POAGE. The subcommittee will come to order.

The Chair believes that it would be advisable to meet again as soon as possible to consider these bills that have come before us.

In that event, it has been suggested that we meet on Wednesday, September 17, 1975, to consider these bills.

Is there any objection?

[No response.]

Mr. POAGE. Hearing no response, we will set the date of September 17, 1975, next Wednesday, at 10 a.m. for a meeting of this subcommittee to give further consideration to these bills that are before us.

I would urge all members of the subcommittee to attend so that we can deal with this legislation.

The subcommittee is now adjourned.

[Whereupon, at 11 a.m., the subcommittee adjourned until September 17, 1975, at 10 a.m.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

WEDNESDAY, SEPTEMBER 17, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to notice, in room 1301 Longworth House Office Building, Hon. William R. Poage (chairman of the subcommittee) presiding.

Present: Representative Hightower.

Staff present: Robert M. Bor, counsel; Hyde H. Murray, counsel; John E. Hogan, associate counsel; John Baize, staff consultant, Subcommittee on Livestock and Grains; Anita Brown, staff assistant.

Mr. POAGE. The subcommittee will please come to order.

It was our hope this morning that we might have enough of the members to justify consideration of legislation upon which we recently held hearings. While we have quality here, I am afraid that we don't have enough of the members present in order to proceed. If we do not hold a discussion this morning, I do not know when we can have it.

The full committee has its own hearings, and there does not seem to be the time, within the next week or two, to dispose of this bill.

I would like very much to do it now, but it seems that we are having difficulty getting members to attend.

Mr. HIGHTOWER. Is there a meeting of the full committee scheduled for 2 o'clock this afternoon?

Mr. POAGE. No.

Mr. HIGHTOWER. I thought that there was.

Mr. POAGE. The Chair is willing to set a hearing at any time: at night or any time.

I must confess that I am getting a little tired of coming up here day after day without having one.

If there is no prospect of a quorum, then we will adjourn the meeting until we can get a quorum.

The subcommittee in adjourned subject to the call of the Chair.

[Whereupon, the subcommittee adjourned at 10:10 a.m.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

THURSDAY, SEPTEMBER 25, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. William R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Melcher, Bergland, Weaver, Harkin, Hightower, Sebelius.

Staff present: Fowler C. West, staff director; John E. Hogan, associate counsel; John Baize, staff consultant, Subcommittee on Livestock and Grains; Peggy Pecore and Wanda Worsham, staff assistants.

Mr. POAGE. The subcommittee will be in order.

We have waited 15 minutes and have six members and the chairman. We need 10 for a quorum. I know nothing else to do except to postpone these hearings until a future date.

If the members of this subcommittee are decided that they want to pass this bill, then I will try to hold hearings to give them the opportunity; but if they want to kill the bill by absenteeism, then that is also their privilege.

The subcommittee will meet when it looks like we can get a quorum.

Mr. SEBELIUS. I will do what I can to get my troops out.

Mr. BERGLAND. Mr. Chairman, would it be possible to set a date?

Mr. POAGE. I am not going to set a date until the Chair has some understanding that we are going to have a quorum. Any time that I can get the understanding that we will have a quorum, then I will call it. It is just frustrating to call these meetings. This is the third time that we have tried to consider this bill, and it is the third time that the members have not attended.

Frankly, I think that some of the members want to kill the bill without voting against it. That is the easiest way in the world of doing it.

The subcommittee is adjourned and will meet when we can get the assurance of a quorum.

[Whereupon, at 10:17 a.m. the subcommittee adjourned.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

WEDNESDAY, OCTOBER 8, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 1301, Longworth House Office Building, Hon. W. R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Melcher, Bergland, Litton, Nolan, Weaver, Hightower, Bedell, English, Fithian, D'Amours, Sebelius, Thone, Symms, and Hagedorn.

Staff present: Robert M. Bor, counsel; John E. Hogan, associate counsel; John Baize, staff consultant, Subcommittee on Livestock and Grains; L. T. Easley, press assistant; Wanda Worsham, staff assistant.

Mr. POAGE. The subcommittee will please come to order.

The Chair notes there is not a quorum but I think it is obvious we will have a quorum in a few moments. I thought we had better begin to consider the matters before us inasmuch as time is limited. Of course, we can take no formal action until we get more members.

The staff has prepared a section-by-section comment memorandum.

Mr. BERGLAND. Might I suggest we do go over this section by section and ask the staff to refresh our memories on suggested changes recommended by the various groups. Frankly, I have forgotten some of these because the hearings were held so long ago. This at least would be of help to this member, Mr. Chairman.

Mr. POAGE. We shall just proceed that way, then.

Mr. Bor, would you like to proceed section by section with us? Let us see whether we can approve or disapprove these sections.

Unless there is objection on the part of some members we can approve sections, and those where there is question we can come back and discuss them.

Mr. Bor. Mr. Chairman, before we get started you might want to consider a couple suggestions that were made which apply generally throughout the bill. Those suggestions relate to additional categories of animals which have been suggested for coverage.

I think at one time there was an indication by those present that they wanted to leave the bill intact in terms of the coverage. However, one of the things which had been mentioned at the hearings was the question of whether horses should be covered by the bill, particularly horses which are transported for slaughter.

Mr. POAGE. That is one of the issues we have to decide. However, I had thought we would save time by going through this, going through everything we agree on, and then discussing matters about which there is question. Of course, transportation of horses is one of those questions.

Mr. BOR. The first section of the bill contains the title of the bill.

The second section sets out the findings for the inclusion of additional provisions in the Animal Welfare Act. To my knowledge there has been no suggestion to change this section.

Mr. POAGE. I want again to point out as far as I am concerned I do not believe in these findings, not on this bill but for any bill, I do not think we should put a political platform in legislation.

I realize findings are for the purpose of justifying some of the legislation. Perhaps it is the only way we can do it. However, we have adopted a practice of writing political platforms into the law and to me it makes no sense because there is no justification for it.

Would it weaken this bill if we left out these findings? Findings are nothing more than somebody's viewpoint and somebody's reason. The reasons may be perfectly sound, but just to put reasoning and viewpoints into the statute does not seem to me to be a good way to legislate.

Mr. BERGLAND. That would suggest we strike section 2 from the bill.

Mr. POAGE. I am asking the lawyers whether if we struck section 2 from the bill it would in any way invalidate the bill.

Mr. BOR. The purpose of the finding is to try to tie in what follows with the commerce clause of the Constitution to indicate that what's being done is a matter over which Congress has proper jurisdiction and not a matter which falls within the jurisdiction of the States.

Mr. POAGE. However, if the facts stated in the findings are true, and I am not challenging them in this case though sometimes they are not, and we all know it, then you do have jurisdiction. The mere fact we state these are the facts does not change our jurisdiction. It is simply something to try to make it more palatable to the public, as I see it.

Mr. THONE. In section 2 it states "It is also essential to prohibit certain animal fighting ventures."

Is that one of the main thrusts of this bill?

Mr. BOR. The last part of the bill deals with animal fighting. The findings you refer to try to tie in the controls against animal fighting ventures with the commerce clause of the Constitution. I think that is the main reason for it.

Mr. THONE. Has section 2 been revised as it is printed in H.R. 9217?

Mr. HOGAN. No, sir I do not believe so. I have not read them line by line but they should be identical.

Mr. BOR. It is the same in H.R. 9217 on that particular feature.

Mr. POAGE. Is this essential to the validity of the rest of the bill? I don't see how you can change facts by merely making a declaration here. The facts are one way or the other. If they are as you set them out, that we have jurisdiction, then there is no problem. If they are not we would not change the facts by declaring something to be a fact which is not.

Mr. BOR. Mr. Chairman, I think one of the problems is that the findings as they are contained in the current version of the Animal

Welfare Act, are related just to the items which are now in that act, and if the findings are not changed by H.R. 9217, then if the bill becomes law the act will be out of balance because you have some findings which are addressed only to certain provisions of the act and not to other provisions of the act. This might cause a question with regard to provisions we are adding.

Perhaps there would not have been a problem if we had no findings in the act to begin with, but when you have findings in the act which relate just to a portion of the act it may raise a question as to whether there is a proper basis for Congress taking action on the balance.

Mr. POAGE. Would you answer my basic question? Can we confer jurisdiction on the Federal Government simply by making findings? Does not the right of the Congress to legislate depend upon the facts and not upon the findings?

Mr. BOR. You are certainly correct, Mr. Chairman. It is just that when the issue comes up before the courts it is easier to resolve if Congress has made a specific finding than if Congress had not acted on the matter. This tends to avoid questions as to whether this is a matter related to the Commerce clause of the Constitution.

Mr. POAGE. If we adopt the practice, and we are coming mighty close to it, of putting arguments into the statute—we will confuse our laws to such an extent that we should all go out and practice law. It will become the busiest profession in the country.

Mr. D'AMOURS. Do I understand you are saying that if we do not include these findings that at some future date, if this law is challenged, some Federal court might, in fact, substitute its judgment for ours and throw out everything we are working on to put into the act today?

Mr. BOR. There is that possibility because the finding which is now in the act states that certain provisions are tied in with the commerce clause of the Constitution. If we do not have any findings which cover the new provisions added by H.R. 9217 then we will have an act which states certain portions are tied in with the commerce clause but not other portions.

Therefore, if the issue comes before the court someone might say, "Well, this property is not a matter covered by the commerce clause." That is the only reason for this.

Mr. POAGE. If the gentleman would yield, that cannot be right, Mr. Bor. The mere fact that Congress has found that this involves interstate commerce does not make it a fact. The validity of the law depends upon the facts regardless of what we found the facts to be.

We cannot change the facts. We cannot by writing a finding here which is contrary to the facts change the right of the Federal Government. We cannot add to it nor take from it simply by declaring that hot water is cold.

Mr. WEAVER. I agree with you. I would like to vote on this. I move the question.

Mr. D'AMOURS. What I am concerned about, if I understand counsel correctly, Mr. Chairman, is that you are saying we cannot change facts by merely saying they do or do not exist. On the other hand, neither can the courts. If we do not say it they may decide that if we feel we don't have that power they might decide they do and they can

throw out everything we are doing here today simply by making that decision.

Whereas, if we state these to be our findings I think we are in fact making it at least very difficult for a court at some later date to say it will find contrary to us.

Mr. POAGE. We are putting the argument in the record.

Mr. D'AMOURS. I think it is more than an argument, Mr. Chairman. I think it is a congressional finding. If it involves facts, as you suggest, I don't think courts are usually empowered to make decisions of fact and thereby overrule those facts with what Congress has found.

I am afraid without this language we might be making all the work we are doing here today much more ephemeral.

Mr. POAGE. Suppose Congress made a finding that the Mississippi River were an intermittent stream. That would not change the fact, would it?

Mr. D'AMOURS. I do not think Congress would do that as a matter of finding in legislation. If they did it would not change the fact but it would at least make it more difficult for a court to find it was not an intermittent stream.

Mr. POAGE. That is the whole purpose of this. This is the whole purpose of the whole philosophy.

I have raised this point on many bills and not simply this one. I have raised this point many times before. I think it is an utterly unsound practice to put your arguments into the statute.

The statute should simply state what the law is and not why we should have this law. It should state what the law is.

If you write arguments into the law then you simply add to the confusion, I think.

Mr. D'AMOURS. I agree with you, Mr. Chairman, but I would rather have Congress state this rather than the courts.

Mr. POAGE. You cannot take that power away from the courts. Sometimes I wish we could but I do not think we can take that power away from the courts.

Mr. WEAVER. I move to strike section 2.

Mr. POAGE. You have heard the motion. Is there any discussion of that?

Mr. SEBELIUS. Do I have it?

Mr. POAGE. Yes.

Mr. BERGLAND. Are we working from H.R. 9217?

Mr. POAGE. I think so.

Mr. HOGAN. I wonder whether we can inquire of the counsel from the Department, who is present here, whether any question has arisen, or any court case has been decided with respect to the interstate commerce clause as it might relate to the general policy finding in the previous enactment?

Mr. POAGE. Certainly we might inquire.

Ms. PROKOP. There are provisions in the present act which are in terms of certain transactions "affecting commerce." We have not been challenged yet so far as I know, but wherever we try to enforce the present act against a dealer or an exhibitor with regard to a transaction which is in intrastate commerce, presently if the issue were raised we would have to show that this particular transaction did have an effect, direct or substantial—

Mr. POAGE. No; you do not have to show that. The presumption is that the law Congress passed is constitutional. The burden falls upon anybody who challenges it.

Ms. PROKOP. Sir, I think it is because of the way the present act is worded. It defines a dealer. For example, a research facility is any school or institution that purchases or transports live animals affecting commerce. Then "affecting commerce" means in commerce, burdening, obstructing, or substantially affecting commerce, and some other things.

Mr. POAGE. And we do not repeal that.

Ms. PROKOP. No, sir, but this bill would repeal that language affecting commerce so we would not, in dealing with the research facility, have to say, "We have evidence that what you are doing does burden, obstruct, or substantially affect commerce." We would not have to prove the facts in each case. Instead we would be in a position of relying, under the bill, on the congressional determination of fact that all their transactions do burden or affect commerce.

Mr. POAGE. There is a presumption in everything Congress does that it is constitutional.

Mr. MELCHER. Counsel is getting into section 3. Is that right?

Ms. PROKOP. Sections 2 and 3 are related.

Mr. MELCHER. I dare say when we get into the jungle as to what is commerce and what is not commerce, anything that mentions the word is related.

The motion before us is with regard to deleting section 2. The actual term of "affecting commerce" comes up in section 3.

Mr. Chairman, these are technical definitions that lawyers delight in arguing about. I simply do not have the time as one member of this subcommittee to get bogged down in these technical arguments.

I want to help in protecting this bill but I do not want to participate in these long discussions on what commerce is. I really want to vote.

Mr. POAGE. All those in favor of striking out section 2 will hold up their hands.

Now those opposed.

The CLERK. Six ayes, three nays.

Mr. POAGE. Very well.

Mr. BERGLAND. Put me on the "no" side so there is a quorum recorded on this vote.

Mr. POAGE. All right, six ayes and four nays.

A quorum being present the amendment is adopted and section 2 will be stricken.

Let's go to section 3.

Mr. WEAVER. I move to strike section 3.

Mr. MELCHER. I would like to speak to that. If the intent of the Department is to regulate the handling of pets and other animals within a State, regardless of the State, and that is what section 3 seems to do, regardless of what the State laws might be, this seems to be the enforcing authority.

Ms. PROKOP. If I might interject something. I ought to make it clear that I am here only in the capacity of providing whatever technical advice or drafting service I can. The Department, as I understand it, is not advocating enactment of the bill.

Mr. POAGE. We understand the Department is not advocating the bill or opposing the bill. We understood you were here to give us the law and not their arguments.

Ms. PROKOP. That is right.

Mr. POAGE. Mr. Melcher raises a question with regard to section (c). On its face it seems to attempt to take control over intrastate commerce, over which we have no constitutional right.

Mr. BOR. I think when you read this in the context of the finding that the regulation of activities within the State is tied in with interstate commerce because of the impact it would have on interstate commerce.

The effect of section 3 of the bill is to change the terminology which is now in the act so it would cover commerce within a State and not merely between States.

Mr. POAGE. How can we assume jurisdiction of commerce within the State? What constitutional authority do we have to regulate intrastate commerce?

Ms. PROKOP. As I mentioned, in my thinking section 3 would not be sustainable without section 2 because it does have the effect of further involving the bill and regulating intrastate activities, and there would be a basis for doing that in the Constitution only if the particular activity burdened or affected interstate or foreign commerce.

Mr. POAGE. This Congress has no more authority to control intrastate commerce than it has to control the making of bread in your kitchen.

Ms. PROKOP. As you know, there are many statutes, such as the Meat Inspection Act, which do regulate intrastate activities.

Mr. POAGE. I think that is true and we do it on the theory it involves interstate commerce. We do it on the theory that all of this affects interstate commerce.

Ms. PROKOP. It does.

Mr. POAGE. But apparently we are coming here and defining it as anything that is within the State regardless of whether it affects interstate commerce or not.

Ms. PROKOP. It seems to me that without section 2 it would be just as well to drop section 3 because I think they are related.

Mr. POAGE. The gentleman from Montana moves to strike that out?

Mr. MELCHER. Mr. Weaver did but I would support the motion.

Mr. POAGE. The motion is before us to strike section 3.

Further discussion?

If not, those in favor signify by raising your hands.

Opposed?

The CLERK. Seven ayes, one nay.

Mr. POAGE. Seven ayes, one nay.

Next we come to section 4.

Mr. BOR. Section 4 of the bill is also tied in with the same matter, Mr. Chairman.

Mr. POAGE. Do you think it ought to come out?

Mr. BOR. To be logical, I am not suggesting it, sir, but having taken the action you have on sections 2 and 3, it would appear section 4 should likewise be deleted.

Mr. POAGE. It seems to me this clearly includes the term.

Mr. WEAVER. I move to strike section 4, Mr. Chairman.

Mr. POAGE. All those in favor say aye; opposed?

The ayes appear to have it. The ayes have it.

Mr. BERGLAND. If I might inquire of counsel, on the mimeograph sheets which have been prepared describing the sections and carrying recommended changes offered by various groups, are these part of the original act which this section 4 in the bill would affect?

Mr. BOR. That is right. Section 4 amends those sections of the original act.

Mr. BERGLAND. Only those functions which would be regulated by the application of the intrastate commerce provision which has been stricken from the bill?

Mr. HOGAN. The mimeographed statement was put together so that when you went through this, if you had questions about what you were amending in each of these sections of the existing law, section 2, section 4, section 11, and section 12, you would know generally what they referred to.

Sections 2 (e) and (f) and section 4 are a general definition of what's included in those particular sections of the existing law.

Mr. BERGLAND. All right. Section 4 of the bill would restrict its authority only to that recordkeeping in intrastate commerce?

Mr. HOGAN. It would be in interstate commerce. The thought was it would be in interstate commerce as heretofore defined in sections 2 and 3. Therefore, I think this section 4 now has to be amended to reflect what you have done in the preceding sections. You have already stricken section 4.

Mr. SEBELIUS. I was thinking of section 2 of this bill rather than the act. In section 4 all we have changed is "affecting commerce" to say "in commerce." We are saying "intended to be moved in commerce." I don't know whether I have gone too far in section 4 or not.

Mr. BOR. The reason for the change in section 4 is that the term "in commerce" was redefined in the previous section so that by redefining it you covered a larger area than previously was the case. That was the main reason for the change.

Mr. SEBELIUS. But are we adding to intrastate commerce by saying it is part of the overall flow of commerce, and, therefore, legislating it to become interstate commerce when in fact it is intrastate as defined in the old act?

Mr. BOR. The action you have taken would be to leave intact the approach which was under the old act and not to cover additional areas which would be purely within the State, commerce within the State.

Mr. SEBELIUS. So we are at that juncture of whether we decide philosophically we want to extend this act to hook up intrastate commerce more firmly.

Mr. POAGE. It makes no difference what we want to do. We cannot affect intrastate commerce. We can only control interstate commerce. It makes no difference whether we write something in an attempt to control intrastate commerce. It would be voided. We should avoid writing that kind of legislation. We ought to make our legislation constitutional when we bring it out.

Mr. BERGLAND. Is there any preemptive precedence in this regard?

Mr. SEBELIUS. I practice law in a small town in western Kansas. If I found that some of the filling stations and hospitals, by reason

of definition of an act of Congress, came under wages and hours, a person cleaning up a room in a hospital was involved in interstate commerce by reason of what the legislature did, and it involved them in wages and hours—

Mr. HOGAN. The bill you are considering on the floor affects certain activities within interstate commerce. Obviously the State plans which are submitted are approved by the Environmental Protection Agency.

Mr. POAGE. It seems to me we want to confine this thing to interstate commerce, over which we have control, rather than writing something over which we do not have control. We have now eliminated section 4. Unless somebody wants to go back we shall pass it.

Section 5 involves additional definitions. This seems to involve applying Federal law in intrastate transactions. Now we are taking up something which again is to involve Federal jurisdiction.

Let's hear comments on section 5.

Mr. BOR. Section 5 defines two terms—one is "intermediate handler" and the other is the term "carrier." The reason for the definition is because this act brings these persons under the regulatory provisions of the act.

Later on in section 10 it provides that an animal shall not be delivered to any intermediate handler or carrier for transportation in commerce or received by any handler or carrier unless it is accompanied by a certificate issued by a veterinarian.

It also has other types of provisions relating to intermediate carriers and handlers. That is the reason for the definition.

In the definition of the term "carrier", the Interstate Commerce Commission made a recommendation for a change. They would suggest the addition of the words "motor carrier" to make it abundantly clear that that is covered by the definition.

Mr. POAGE. I don't think there is any more need to say "motor carrier" than "wheelbarrows." If there is no objection to including the term "motor carrier" we shall include the term "motor carrier."

The Chair hears no objection so it will be included.

Mr. BEDELL. I presume we have to mark off "further" in the section. Section 5 states "further amended".

Mr. POAGE. Yes, the word "further" should be stricken.

This is purely technical drafting. If there is no objection the staff will be empowered to write proper language there.

The Chair hears none and the staff will write proper language to make it fit the amendments adopted.

Mr. BERGLAND. We have not yet disposed of section 5, have we?

Mr. POAGE. No.

Mr. BERGLAND. I have a question on "intermediate handler." I cannot understand what the Academy of Pharmaceutical Sciences has suggested. In lay terms what are they saying?

Mr. HOGAN. They were not particularly explicit in their statement. They filed a statement and did not testify. They did not embellish on their statement for the record.

However, in a telephone call they indicated they were concerned that the term was too broad and would include within the term "intermediate handlers" individuals whom they felt might be covered by other agencies or those the committee might not in its due consideration want to include.

I think the American Transportation Association also had some concern about this particular provision, as to whether it would include transportation companies which would deliver and pick up animals.

I think the term as it is now included in the amendment does state it broadly and would include such things as air transportation companies. In other words, if they had an animal within their control at an airport, in effect they would be an intermediate handler and would have to comply with provisions of this bill and regulations of the Department of Agriculture which apply to intermediate handlers.

It would be conjecture as to exactly what those provisions might be if this bill passed. Regulations obviously will be issued by the Secretary of Agriculture, and presumably at that time these objectors could have an opportunity to comment on them.

Mr. MELCHER. In regard to the carrier, he will be subject to regulations under (j) under any circumstances. Is it not a question of whether they might be subject to overlapping regulations, (1) as a carrier and (2) as intermediate handlers?

Mr. MELCHER. In effect that is part of their objection.

Mr. MELCHER. I do not think the Department would have any problem, would they?

Mr. HOGAN. The committee could put language in the report accompanying the bill that it did not wish to have this be unduly burdensome where a particular entity, such as an airline company, might be subject to the regulations as a carrier and also might be subject to regulations as an intermediate handlers.

Mr. SEBELIUS. I would like to ask about section (j). We added the words "motor carrier", engaged in the business of transporting animals for hire.

Don't we have animals defined in this act?

Mr. BOR. Yes. The term "any animal" would have to be read in context with the definition of "animal" in the act.

There is a specific exemption in the definition for livestock and poultry as well as horses not used for research purposes.

Mr. SEBELIUS. I wanted that especially clarified for me. We wind up on motor carriers hauling cattle——

Mr. BOR. This would not do that.

Mr. POAGE. If there is no further discussion——

Mr. BERGLAND. I see a mimeographed amendment to section 5 distributed. What is this?

Mr. HOGAN. This is an amendment which the committee discussed. There was a question in the course of the testimony as to whether they wanted to redefine the term "handler" as it is now defined in the existing law, in effect delete it and restate it, as it now appears before you.

There was particularly some concern about the question of whether or not you wanted to cover dogs for hunting or security. Those words are added here in line 5 of this restated definition of "dealer".

Mr. POAGE. This is a proposed amendment to section 5 of H.R. 5808. We are reading from H.R. 9217.

Mr. BOR. These bills are identical, Mr. Chairman.

Mr. POAGE. The section we are working on relates to the definition of intermediate carrier and the term "carrier."

What you are proposing in this amendment is the term "dealer" as well as pet stores.

Mr. BOR. There are two matters brought to the forefront in the mimeographed sheet that was passed around. One is that it brings to the attention of the subcommittee the question of whether you wish to cover under the act these additional categories of dogs which are not now covered under the act.

There was testimony which was received during the hearings from some people who asked for enlargement of the category of dogs to include hunting, security, and breeding dogs.

The other part of this is a matter which had been brought to the attention of the staff by Mrs. Prokop, attorney in the Department of Agriculture, which takes care of some technical problems they have had in the administration of the act and it is designed for the purpose of clarification.

You might wish to hear comments on this particular paragraph.

Mr. POAGE. I think the Chair has said we do not wish to get back into hearings on this thing. We are trying our best to move. If we go back into hearings we will never get this bill out.

We want to hear the explanation of the attorneys but the Chair will not turn anything off if the members want to hear it. However, I do not feel we will get anywhere if we hear witnesses again.

Mr. BERGLAND. I agree, but I am confused here.

Does counsel have a copy of H.R. 5808? Is it the same as the text from which we have been working? Is it the same as 9217? Are the line references and page references the same?

Mr. HOGAN. Yes, sir. The hearing was held on H.R. 5808. That is the bill on which the hearing was held and testimony was received.

What you have before you apparently is the same bill reintroduced with new cosponsors, a bill which I think is identical line for line. I have not proofread it.

Mr. POAGE. If it is word for word the same I see no reason to discuss another bill. We ought to stay with the bill on which we had hearings.

Mr. HOGAN. Yes, sir. The bill on which you had hearings is the one to which the amendment, if you wish to consider it, is before you.

If not we can move on.

Mr. POAGE. What it does is to add to section 5.

You do not show you are adding to it here. As this amendment is written it seems to me you are striking out everything that is in section 5. You do not say you are striking it out but you rewrite section 5 and make no reference to the things that are in the existing bill. I take it you intend to leave them in?

Mr. HOGAN. Yes, sir, Mr. Chairman.

Mr. POAGE. What you are doing, then, is to add to. In other words, at line 10, after period on line 10, you are adding the following. Is that what it amounts to?

Mr. HOGAN. Actually it would appear ultimately, unless you introduce a new bill, as a new subsection. It would appear under section 5, page 2, line 24.

Mr. POAGE. And then you would add the language in the printed bill to this?

Mr. HOGAN. You would add to the language on the printed bill, where the colon on line 24, page 2 appears, that language which is an amendment to the definitional part of the existing law, subsection 2(f), and subsection 2(i) appears on page 3, line 1.

Mr. SEBELIUS. We need the language, then. Paragraph (f) of section 2 is the act we are dealing with. We are amending that by this bill and we need to know what amendment we are making and what we are getting rid of in the definition of "dealer" and these exceptions.

Mr. HOGAN. What you are adding basically is the language which is contained here "for hunting, security, and breeding purposes" just after the word "pet".

Mr. SEBELIUS. You are making three exceptions—retail pet stores, whether they can sell so many, and value under \$500.

Mr. HOGAN. And, as majority counsel has indicated, the Counsel for the Department has some additional reasons as to why they believe this could be restated as it is here.

Mr. POAGE. Mr. Hogan, we don't want reasons unless there is objection to it. If the committee should approve it we do not want to waste our time going over why we should approve it. If there is no objection to it why not accept it?

Does anybody object to this? We did go over these things. Is there any objection to adding the language of 10 percent here given us by Counsel?

Mr. MELCHER. When you get into making a determination of whether somebody has three female dogs or three female cats, or both, and you have no more than four hunters, when you put that into statutory language you are really cluttering up our books with a lot of detail.

I am sure the language is well-intentioned, but I hesitate to be part of a legislative process where we put into the statute such a mandate for determining what facts can determine.

Mr. POAGE. If you do not put something of this kind here then we have included every family where the kid sells a puppy or something of that kind and you have made them a dealer. Obviously we do not want to do this.

Therefore, we have to use some kind of definition to eliminate that kid who has a puppy for sale as a dealer.

They have put this in here as a benchmark. They can go beyond this but then become dealers. This leaves the Department with a free hand really.

Mr. MELCHER. Then I would suggest that the exemption, the retail store exemption I am sure is necessary. Counsel will advise us as to that.

However, when we get to 2, if we leave it to the discretion of the Department, why don't we say in 2, "any person who does not sell or negotiate the purchase or sale of any animal other than dogs and cats" and put in a clause which says "in commerce." That then does leave it to the Department as to how much they will regulate.

Mr. POAGE. The trouble is that you have already defined commerce in such a way this does affect commerce.

Mr. MELCHER. Significantly affects commerce.

Mr. POAGE. Does it not make more sense to have a cutoff figure rather than saying "significantly"? The justice of the peace in one county will decide one thing and the Supreme Court will decide something else.

Mr. MELCHER. If we want to include the finding of who owns no more than three female dogs or cats, or both, I dare say if that is the statutory language somebody can go to court and force the Department to show all their records to show how they determine who owns three cats, dogs, or both. I know they will not do that. It is possible, however.

Mr. POAGE. It simply gives the defendant, if the Department were to prosecute some kid for selling a dog—

Mr. BERGLAND. I think the gentleman from Texas makes a valid point. My boy, Billy, bought a nice Persian kitten last week from a neighbor. I don't want the pets involved in that transaction.

If we do not adopt paragraph 2 it means we will put the Feds in the business of inspecting Billy's cat.

Mr. POAGE. If your boy were accused of violating the law he would have a perfect defense by saying he bought it from somebody who did not sell more than three during the year.

Mr. BERGLAND. He didn't.

Mr. POAGE. If you say "significantly affect interstate commerce" the sale of a high-priced animal might be affected and the sale of an ordinary kitten might not. Who is to determine that effect on interstate commerce? It seems to me this is more exact than when you say "significantly affect commerce."

You might want to say a dozen sales rather than three. You might want to say something else. However, it seems to me you have to have a benchmark in there.

Mr. HIGHTOWER. I have raised hundreds of cats and dogs in the process of raising my children. We have given them away, sold them, and I would have to have to count the number of litters in any particular year.

Can we substitute language such as this—not engaged in the business for profit and breeding.

Mr. POAGE. Nobody ever admits he is engaged in that business.

Mr. HIGHTOWER. I think there are certain standards. If you are going to have a pet store you have to have a store license. You need an internal revenue number, and such as this. If we are going to get involved in counting cats and dogs, I could not agree with Mr. Melcher more. I don't think we ought to put in any kinds of numbers. Let's say other than cats and dogs, and not engaged in the business for profit, or something like that. We have people everywhere who have pets they want to get rid of and I don't want them directly or indirectly involved.

Mr. MELCHER. I think the gentleman from Kansas has offered this. As far as Mr. Billy Bergland is concerned, the Feds would not be looking at Billy but they would be looking at the mother of the Persian kitten and the owner of that mother. Billy is home free.

Mr. HIGHTOWER. And there are kittens involved there.

Mr. MELCHER. I want to see the effect.

Mr. POAGE. Then there is no defense.

Mr. BERGLAND. Except if we struck 2 and accept 3 the definition would fall on the gross volume of business done. It would exempt all transactions under \$500. Is that right? It would not get down to the business of trying to count litters.

Mr. BEDELL. Is the reason we excluded all pet stores—if there is that finding I don't want to prolong it. Pet stores are excluded?

Mr. HOGAN. That is the existing law.

Mr. BEDELL. Is that the desire, that this be done?

Mr. POAGE. Yes.

Mr. BERGLAND. I move this amendment be adopted except paragraph 2 of the amendment be stricken.

Mr. POAGE. All those in favor of striking paragraph 2 of the amendment say aye; those opposed?

It is unanimously carried. Paragraph 2 is stricken.

Now Mr. Bergland moves—

Mr. BERGLAND. I move the amendment as amended be approved.

Mr. POAGE. Is there objection?

The Chair hears none.

Without objection it will be added to the bill.

Let's move on.

Mr. MELCHER. I have looked over section 6, Mr. Chairman.

I think with a little help from the staff it makes it clear we do have to use the term "every carrier" because there would not be a definition of supplemental carriers, and so on. Is that right?

Mr. HOGAN. As I understand it, the CAB does not have any jurisdiction over unscheduled carriers.

Mr. MELCHER. All right.

Mr. HOGAN. The language we have here would take care of that.

Mr. MELCHER. We do not have the act before us. What that section of the act states, I suppose, that a registration of the various people affected by the act subject to the regulations shall—

Mr. HOGAN. Shall register with the Secretary.

Mr. MELCHER. I suggest we move along from section 6.

Mr. POAGE. Mr. Melcher moves approval of section 6.

Is there objection?

The Chair hears none. Section 6 is approved.

Next is section 7. Are there any comments?

Mr. HOGAN. These are just general comments which were made. I do not think they are matters which—

Mr. POAGE. Is there objection to section 7? The Chair hears none. Section 7 is approved.

Next is section 8.

Mr. BERGLAND. This is an area where there has been objection raised by persons affected. The argument is that the recordkeeping provisions of this section are unduly onerous.

Mr. POAGE. In keeping with usual governmental procedure.

Mr. BERGLAND. That is right.

Mr. MELCHER. I have some sympathy for the carriers' objections to this. Inasmuch as they have to do all this for the CAB and record-keeping is an extremely costly function of both business and Government, I see no reason to force onto the air carriers duplication of the recordkeeping. I certainly hope we would adopt language which will permit the existing situation to continue and that Agriculture will not force new forms of these people and require them to file the forms with Agriculture.

Mr. BOR. Mr. Melcher, I think one of the problems which was raised during the hearing was that CAB felt it did not have sufficient jurisdiction over this area, and the types of records which would be kept by

the Department of Agriculture would be different types of records than the types of records which the CAB might require of the scheduled airlines.

We might wish to consider that the Department would consult with these other agencies before it requires records or proposes record-keeping requirements.

The records which other agencies require are records which are addressed to the regulatory activities within the scope of their authority, and they do not get into the problem we have here.

Mr. POAGE. In other words, one requires records to be kept with green ink and the other with blue ink, so you need two different sets.

Mr. MELCHER. You have the air bill, whatever is necessary to include on that air bill to carry out the purpose of this act, and that can be done rather than having a separate form which also will be necessary, issued by Agriculture, which has to be filled out by the carrier as well.

I see no reason why we cannot require under the terms of the act that whatever is necessary be incorporated into the air bill.

Mr. SYMONS. What does this mean if you want to ship your dog from Montana to Washington, D.C.?

Mr. MELCHER. It means in about a year from now or maybe 2 years—it will take that long to develop the regulations and get out the forms—you will find another form which has to be filled out at the time you purchase a ticket, and there will be two forms—one for the CAB and one for the Department of Agriculture.

What I am suggesting is that we make sure in the legislation there is only one form. I see no harm in incorporating whatever is necessary in the air bill.

Mr. SYMONS. What is wrong with the way it is now?

Mr. MELCHER. The way it is now will be changed after we enact this and there will be more requirements.

This particular section also indicates "intermediate handlers and carriers shall make and retain for such reasonable periods of time as the Secretary may prescribe such records with respect to the transportation, receiving, handling, et cetera."

What commonly happens, at least in my experience, is that the Department is mandated to get out a separate set of forms which will be filled out, which will be initiated when you put your dog on the airplane, and those records will be made up in a prescribed way to show you are carrying out the intent of this act.

All I suggest is that we do not make a separate form necessary, but whatever is necessary to carry out this provision is done in one form.

Mr. BERGLAND. Someone has suggested language which would accomplish what we all seek to achieve. It is included at the bottom of page 4 of the mimeographed print—adding on page 4 the following "after consultation with any other Federal agency sharing regulatory jurisdiction over such handlers and carriers."

Mr. MELCHER. Is that counsel's recommended compromise?

Mr. HOGAN. It is a compromise offered.

Mr. MELCHER. I don't think it is a compromise. All that means is that they will talk to the CAB and then they will get out their own forms.

Mr. BOR. Would a combination of that and language which might state that to the extent practicable the information shall be provided

on existing forms which are required to be provided by these other regulatory agencies?

Mr. POAGE. It will not give you relief. With all due respect to the Department of Agriculture it is not any worse than any of the rest of the agencies but nothing is practical if some other agency did it. The same thing is true with the CAB as to what the Department of Agriculture does. You have to mandate CAB to include on these air bills the information which is necessary to carry out this provision.

Mr. HIGHTOWER. Does this committee have jurisdiction in this legislation to mandate to the Department of Transportation?

Mr. POAGE. Unless somebody raises a point of order against it. I don't think anybody would.

Mr. BOR. One of the problems we run into when one addresses language to the Civil Aeronautics Board—

Mr. SEBELIUS. I apologize, Mr. Chairman. We are discussing separately this provision here.

Actually we are amending language which says "forms supplied by the Secretary." My State grows more of these puppies than any other State by far. A dog gets more stress when hauled by a truck or car than by air travel. Air transportation people don't want any part of this. They want to get out of hauling these animals.

That defeats the very purpose of those pushing this bill. If they are not hauled by airfreight your puppies and dogs will really suffer distress.

Mr. FITHIAN. I have some information with regard to this. I wonder what the objection would be to striking the entire section.

Mr. POAGE. The feeling is that the present airbill does not give enough information.

Mr. FITHIAN. I am sorry, sir.

Mr. POAGE. That is the reason.

Mr. HOGAN. Congressman Fithian, what you are talking about here is a significant part of enforcement. If you want the Secretary to enforce the laws having to do with handlers and carriers when they are handling pets, dogs, cats, what have you, you then have to give them something upon which to base their enforcement.

If they are handling a dog there is one principal way that the agency enforcing the law can control this. It has to have some record in the hands of the carrier and the hands of the intermediate handler where the inspector for the Department of Agriculture can go in and see how long an animal was retained and whether or not other regulations with respect to their care and treatment were complied with and followed.

Presumably the forms and records retained on file would insure that the regulations were complied with by the handlers. If you delete this provision entirely, you are taking out of the hands of the Secretary and the Department much of their enforcement power.

Mr. FITHIAN. If I shipped a Christmas package to somebody, the airline which shipped it would have a record and I would have a receipt of some kind, would I not, that it was put on a plane at such and such a time? I believe you can trace lost items on an airline through present recordkeeping systems.

I don't particularly care one way or the other on this. I raise the question because of the basic thrust, and the basic thrust is that we keep

writing regulations and filling out forms until we get into a bureaucratic jungle.

Mr. POAGE. If you ship that package it does not have to be kept out of the cold, Sun, and so on, but if you ship the dog we want the record to show whether the dog did not arrive in 4 days, whether he boarded at National Airport, whether he was fed at Richmond, and how the dog was treated.

You ship a package of books and it makes no difference.

Mr. FITHIAN. I understand.

Mr. POAGE. The present records show that. The present airbill shows everything you need at the present time but it does not show any of those things we are trying to cover for these live animals.

Mr. BEDELL. The question is, How do we accomplish it? I tend to agree with the gentleman from Indiana. I do not think we accomplish it by getting more forms to fill out showing they did it.

Mr. POAGE. As Mr. Hogan points out, there has to be some way of enforcement. You don't accomplish it unless you have some enforcement.

The Department of Agriculture is chartered with enforcement. They can get no records if the airbill and waybill do not show how the dog was treated. However, if the waybill has to carry information about the treatment of that dog, then the Department is in a position to enforce those regulations.

The whole question, then, comes to this—the bill as now written states the Department can require another document to go with the dog.

Mr. MELCHER. If we merely amend this to state the Department will give the language and terms attached to the airbill we have accomplished everything we want.

Mr. POAGE. That is right, if we give the Department the right to require CAB to include this on the airbill, all the information it needs.

Mr. FITHIAN. That is all I am suggesting, one document. I feel one department should handle it.

Mr. POAGE. CAB has to have an airbill. You cannot carry on your business without a bill. You have to have the airbill. If we asked CAB to include such information as the Department of Agriculture feels is necessary, it seems to me you have covered everything.

Mr. BERGLAND. If we broadened the definition of carrier to include all persons engaged in the transporting of animals for hire, we are not limiting it to airplanes.

Mr. HOGAN. That is right, Congressman.

Mr. BERGLAND. We are going to nonscheduled truck lines hauling for hire and not just common carriers.

Therefore, by the language suggested by the gentleman from Montana we would find we could remedy the problem with commercial air carriers, but what about nonscheduled carriers?

Mr. POAGE. Those not carried by scheduled airlines can be required to file with the Secretary of Agriculture. But when you already have a documentation we just want to avoid duplicating it.

Mr. BERGLAND. That is right.

Mr. MELCHER. We are addressing ourselves to part of the situation. We leave out that term. We don't buy that term "practicable" and so on? We leave that out.

Mr. BOR. As I understand what has been proposed, it is that where there are existing forms required by regulatory agencies, such as the CAB and ICC, the Department of Agriculture or the Secretary would require that agency to include in those existing forms—

Mr. POAGE. Such information as he needs and wants. Such information as he may require.

Mr. BEDELL. Where there are no such forms what would be done?

Mr. POAGE. He can require a full form then.

Mr. BEDELL. I move we delete section 8.

Mr. POAGE. The whole section?

Mr. BEDELL. Yes.

Mr. SEBELIUS. You would not want to do that because the present language in the agency reads "a form supplied by the Secretary." By this section we are trying to take care of that. In the present law if we delete section 8 it will still read the present form supplied by the Secretary.

Mr. BEDELL. I withdraw my motion.

Mr. POAGE. I wonder whether we can agree we will ask counsel to prepare language necessary to eliminate the duplication of forms and the authorization of the Secretary to require such information as he may need on other departmental forms.

If there is no objection we shall so instruct counsel.

The Chair hears no objection. It is so ordered.

We shall now pass to section 9.

Mr. LITTON. Does this act cover horses which are destined for slaughter?

Mr. BOR. The act at present does not. The way this is drafted it would not include that category, although there has been testimony given regarding that matter.

Mr. LITTON. I have an amendment to add horses destined for slaughter. My amendment would be added to page 4, line 7. It would include horses destined for slaughter. We did have testimony on that.

Mr. POAGE. Yes; we did. It is in order.

Is there any discussion?

Mr. BERGLAND. There is. I want to make a distinction between horses for slaughter and cattle. They are on a nonregulated carrier headed for Kansas City.

Mr. POAGE. Well, he looks at them and I am sure you can tell a horse from a cow.

Mr. BERGLAND. I assume a qualified inspector would know that difference but I am thinking in terms of impact. Mr. McEwen mentioned inhuman treatment of horses headed for Canada from this country. How do we distinguish between those abuses and whatever abuses there might be in the transportation of animals for slaughter which might not be—

Mr. POAGE. We make the distinction on the basis that we now have legislation relating to shipment of cattle. I grant you it is inadequate in my judgment with regard to the existing shipment of cattle because trucks can go long distances without the unloading required of the railroads.

However, we have laws at the present time, and have had since 1916, requiring unloading, feeding and watering of cattle moving by rail.

I think our laws need some revision in that respect, but it is my judgment that you would be doing a grievous harm to this bill if you attempted to put that in here because if we put that in here today, tomorrow morning you would have a delegation from a half dozen different States here to fight the entire bill which are not now taking part in this bill. The cattlemen and truckers are not participating in this and are not fighting it. However, you would have every one of those cattle truckers and almost everybody buying and selling involved.

I agree with you we are abusing those shipments. We are hauling calves out from the panhandle of Texas without ever unloading them, and I know it. I do not think that is a sound practice.

However, to put that in here seems to me to be a fast way of killing the bill.

Mr. LITTON. My amendment—

Mr. POAGE. Your amendment had to do with horses.

Mr. Bergland asked about treating cattle in the same way.

The answer is the practical answer, that you cannot do it without opening up problems we do not need to open up.

Mr. LITTON. I move my amendment and then we can dispose of it.

On page 4, line 16, immediately before "The" insert the following new sentence:

The Secretary shall also promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by any airline, railroad, shipping line, trucking line, or other enterprise of horses consigned by any person, or any department, agency, or instrumentality of the United States, for transportation in commerce for the purpose of slaughter.

On page 7, line 11, strike out "or carrier" and insert in lieu thereof, "carrier, or other airline, railroad, shipping line, trucking line, or other enterprise."

I move those amendments.

Mr. POAGE. How do you determine that these are going for the purpose of slaughter? Of course, if they are on an airline, common carrier, or truckline, you have a bill of lading. But if you are simply going by a privately owned truck, as many are carried, there is no such record. All the man has to do is to say he is carrying them to the next county seat.

They are not the common carriers who are causing this unhappy situation but they are the unregulated truck operators.

Mr. LITTON. I know it would be difficult in each case to identify them but there are known circumstances where abuses are occurring. At least this would put proper legislation on the books to permit the Secretary to correct some of the known abuses.

Mr. POAGE. The point I make, however, is that you confine these in commerce for the purpose of slaughter. It seems to me that opens the door so that you would exempt every one of the illegitimate carriers. You would catch the responsible carriers, sure, but they are not the ones who are carrying on this practice now by and large.

Why do we need the words "for the purpose of slaughter" there? If you leave that off then we have some real control over them.

I know then it involves the fellows carrying their own horses and trailers.

Mr. LITTON. I considered that. However, abuses do not usually occur when one ships his own horses. There is no need for us to establish regulations where abuses do not normally occur.

Mr. POAGE. That is what you are doing here. It seems to me you are establishing it for the railroads and airlines and common carrier truck-lines, and then you are exempting—not intentionally exempting but the practical effect of these last words—is to exempt every illegitimate carrier.

There is no way in the world you can prove he is carrying them to Canada for the purpose of slaughter. All he has to do is to say he did not intend to carry them further.

Mr. BERGLAND. The gentleman from Texas is correct. The carrier would be a private trucker who buys horses from Georgia and sells them to someone in Montreal. That person in Montreal in turn is reselling them for slaughter. You cannot enforce this.

Mr. POAGE. I don't think you can enforce it at all. I am thoroughly in accord with what the gentleman wants to do but adding these words "for the purpose of slaughter" gives them a complete out, and that is for every illegitimate operator.

Mr. MELCHER. I would like to agree with Mr. Litton and everybody else about being humane in the shipment of horses or other animals, but I wonder whether this bill which deals with laboratory animals, cats and dogs, and animals sold in pet stores is the proper place to start putting livestock in. Horses are classified as livestock.

This is a very miniscule part of the livestock movement in this country. I don't presume we even have jurisdiction over the interstate shipment of livestock, do we? Is that not in Commerce?

Mr. POAGE. We do.

Mr. MELCHER. Then horses belong in a broader category of livestock.

Mr. POAGE. We have defined livestock for the purpose of this bill, practically having but horses and cattle and sheep.

Mr. SEBELIUS. I have an amendment.

Mr. POAGE. If you want to include these horses and cattle, I think you are right, they are being sent for slaughter. But if we leave off "for the purpose of slaughter" as you correctly pointed out, the man carrying his own horses in a trailer will not be mistreating those horses, not one case out of a thousand. The people we are trying to get at would be caught if we leave off these five words.

Mr. SYMMS. I think there is another problem here. These wild horses, horses turned loose on the rangelands in the Western States, have in the last 10 years become a real menace to rangelands. They are hard on the grass, they overgraze, and one horse eats what three cows eat. What they are trying to do is round them up and get them off the range. This also causes a lot of problems, emotional problems.

I would think this amendment might cause us problems, rounding them up with helicopters, and so on. We don't want to do that.

I think we would be better off if we kept this a dog and cat bill, which is perhaps an apt description of the bill. It would be better to keep wild horses out of it.

Mr. POAGE. I don't think this relates to the wild horses.

Mr. SYMMS. It states the agency or other enterprise and horses consigned by other persons.

Mr. POAGE. This relates only to their transportation by carriers. No carrier is involved in rounding them up.

Mr. SEBELIUS. The trouble is that if it looks attractive we will add cattle, sheep, and all this again. I don't think the competitive nature of the business will cause this to be a problem. This is a highly competitive business and they compete to have the very best equipment. I don't want to open the door for all these other things. You might have to have a veterinary permit every time you move cattle, and cattle move at least five times from the time they are calves until they get to slaughter.

As much as I would like to help your business here, there are not enough veterinarians around to check the cattle before you transfer them.

I am afraid this would be opening up something. It looks like a fine thing. But I would just as soon leave this a cat and dog bill.

Mr. WEAVER. I move the previous question.

Mr. POAGE. The previous question has been moved on the Litton amendment. All those in favor of the amendment by Mr. Litton will raise their hands.

Those opposed?

The CLERK. Seven nays, three ayes.

Mr. POAGE. Seven nays and three ayes. The amendment fails.

Is there any other suggestion as to section 10?

Mr. HOGAN. The clerk is passing around another amendment to section 10.

Mr. POAGE. Give us an explanation.

Mr. HOGAN. Page 4, line—

Mr. D'AMOURS. We have not yet covered section 9.

Mr. POAGE. All right, section 9 is before us.

Is there any suggestion as to section 9?

Mr. SYMMS. I move we strike section 9 from the bill.

The people who own these animals, exhibitors, research facilities, and so on, they have a certain interest in keeping this animal in good health.

For us to specify these things, you would have to have all kinds of architectural specifications with regard to shipping dogs. I know when I ship my dog I personally see how the dog is going. I think that is what most people should be doing. This is just impossible and it will involve an awful lot of paperwork for the Secretary. They don't need that responsibility. I think we would help them by deleting this from the bill right now.

Mr. BERGLAND. It seems to me section 9 is the essence of what we are trying to do. This is the operating title of the bill. If we don't authorize the Secretary—the gentleman from Idaho knows precisely what he is doing. He is a capable legislator, but I must disagree. I think the amendment should stay in.

However, there are some questions which might arise as to broad jurisdiction. Does it include snakes, fish?

Mr. SEBELIUS. The language says "adequate veterinary care."

Mr. SYMMS. This should be called the veterinary welfare amendment.

Mr. HOGAN. Some of these questions can be answered in the report accompanying the bill. They are raised here for the general infor-

mation of the committee. I think the language in the report can address certain of these issues in the report accompanying the bill unless the committee feels specific language is required.

Mr. SYMMS. What will you do about these standards—containers, feed, rest, ventilation, adequate veterinary care?

With that kind of broad language there is no telling what they will come up with. It may be so bad I may not be able to get my dog from Washington to Idaho without using my car. I have done that, too. I am sure the dog prefers United Airlines. They have treated the dog very well. I have never had a problem with lack of oxygen, and so on.

Mr. MELCHER. I am a little concerned about what is meant by "adequate veterinary care." Of course, these are standards that the Secretary has to police.

I am not sure how that should be interpreted. We don't intend under the act that a veterinarian be at the air terminal or at the loading point, the receiving point, and so on. All we are concerned about is that there be humane treatment.

Certainly if the animal appears to be sick, then the responsible carrier is going to attempt to do the humane thing and get that animal to a veterinarian. However, to just throw "veterinary care" in here, I don't know what the term means. I tend to think we would cover it better by saying "insuring humane treatment of animals," and then if the Secretary, in setting standards, wants to specify that obviously sick animals should be placed under the care of a veterinarian as quickly as possible, it would remove any question involved here. A veterinary can be available at the air terminal or terminal of any other carrier.

Unless there is sound reason for putting it in I would urge the committee to strike it.

Mr. POAGE. Is there any objection to striking the clause "adequate veterinary care"?

Mr. BERGLAND. Is there any other section in the bill dealing with this before it is loaded for shipment?

Mr. POAGE. That is another section.

Mr. BOR. There is a requirement that a veterinary's certificate be supplied.

Mr. POAGE. We can strike this language and the Secretary still has the power to prescribe whatever is necessary to assure humane treatment of the animals, including veterinary care where it is necessary.

Is there objection to striking the three words?

The Chair hears no objection. The three words will be stricken.

Mr. Symms now moves we strike out the entire section. All those in favor of striking the entire section hold up your hands.

Those opposed?

The CLERK. Eight nays, one aye.

Mr. POAGE. There being one aye and eight nays, the amendment does not carry.

Mr. SEBELIUS. I have an additional amendment.

Mr. POAGE. Yes.

Mr. SEBELIUS. Line 16. When you name all these things you are excluding everything else by a matter of legislative interpretation.

I would have it read "shall include" and then strike out everything up to the word "factors" and put the word "such" in front of it. "The statute will include such factors as the Secretary feels are relevant."

If you set out containers, ventilation, temperatures, you will have all kinds of problems. Why not say the Secretary shall assure humane treatment of animals in the course of transportation?

Mr. POAGE. Humane treatment of animals, including horses.

Mr. SEBELIUS. Horses.

Mr. POAGE. Feed, water, ventilation.

Mr. SYMMS. I support the gentleman's amendment. I think any time we do this we are opening the door for an absolute and unbelievable type of regulation. I can just see when you turn loose 25 lawyers and a few people concerned about dogs and cats, in my opinion dogs and cats have it better in the United States of America than anywhere else in the world. There are no dogs in China. They either shoot them or eat them. We have dogs living high in this country. We will get it so we cannot get the dogs on a plane if we are not careful. We make a mistake if we don't tie this down. All we want to do with this amendment is to say the dog will not have oxygen starvation. That is about it.

Mr. WEAVER. The gentleman is suggesting we should eliminate Red China?

Mr. SYMMS. No. I am saying the dogs have done well without this law. If we pass a law so I cannot get my dog on a plane from Idaho I will be disgusted.

If you start writing regulations for containers, feed, water, will you say you have to take the dog off every 4 hours to feed him and water him? It will not hurt a dog to go from one side of the United States to another in a jet airliner as long as he is not too cold and has oxygen. That is the main problem.

Mr. HIGHTOWER. I move the previous question.

Mr. POAGE. All those in favor of the amendment by Mr. Sebelius raise their hands.

Those opposed?

The CLERK. Four ayes and four nays.

Mr. POAGE. The motion fails.

I would suggest we move the standards down to the end and say that the standards that the Secretary of Agriculture may include such requirements as are necessary to assure humane treatment of animals in the course of their transportation in commerce, including but not confined to containers, food, water, rest, ventilation, temperature, and handling.

Mr. SEBELIUS. All right.

Mr. POAGE. Is there objection to that?

The Chair hears none. If there is no objection it will be approved.

Mr. BOR. Is it your thought that the named factors would not be the only things he might include? He might include other factors as well?

Mr. POAGE. All I was proposing to do was to shift the standards. Give the Secretary the authority to prescribe regulations he wants to. Mr. Sebelius points out, and I think correctly, that by putting these in front of that that you then have limited what the Secretary can do.

Mr. SEBELIUS. The thrust is humane treatment of animals in transportation. Then we do go back and ask whether he would consider these things.

Mr. POAGE. These are some of the things he could do. It shifts it from one place to another.

I think all it does is to clarify the power of the Secretary of Agriculture. Frankly it does not limit the Secretary of Agriculture.

Mr. WEAVER. Are you suggesting that the language say "may include" or "shall include"?

Mr. POAGE. I said "may include." I didn't use the word "may" at all really. The Secretary of Agriculture may have the power to promulgate such rules and regulations relevant to assure humane treatment of animals in the course of their transportation in commerce as he may determine is necessary, "including feed, water, rest, ventilation, temperature."

Mr. SEBELIUS. The thrust is that it is humane treatment of animals in the course of transportation. Then we come on and say these are some things to be considered.

Mr. SYMMS. You say "standards shall" and change it to "standards may."

Mr. POAGE. I didn't use the word "standards" at all. I said the Secretary might promulgate rules and regulations that he determines necessary to assure humane treatment of animals in the course of their transportation, including requirements with respect to food, water, rest, ventilation, temperature, and handling. We do not include veterinary care.

Frankly, I do not think it does what the original Sebelius amendment would have done. I think it leaves the Secretary completely free to impose these regulations but at the same time it does not limit him to these things which are named here.

Mr. BOR. Would it accomplish your objective to say—including requirements such as requirements with respect to—after the language you read out. Instead of just saying "including requirements with respect to containers."

Mr. POAGE. Put in whatever words are necessary.

Mr. BOR. Including requirements such as those you named?

Mr. POAGE. All right. Is there any objection?

The Chair hears none. That will be approved.

Now we get to section 10. Do you have comments on section 10? This is the veterinary certificate language.

Mr. HOGAN. You have a draft of the amendment before you, Mr. Chairman. It goes to page 4, line 25.

Mr. POAGE. Talk to us. Don't just tell us the amendment.

Mr. HOGAN. This would amend the existing language basically by striking "no animal" at the bottom of page 4, line 25, and substituting therefore on your amendment page, starting "no dog or cats" down through the second line. This is language recommended by the Society for the Animal Association for Laboratory Animal Science. They are concerned about shipping research animals and have this veterinary certificate as a requirement for shipment.

This would limit it to dogs and cats or additional kinds or classes of animals designated by the Secretary.

This language conforms generally to the existing language in the bill which appears on page 5, lines 15 and 16 so that your language here with respect to the certificate of the veterinary would conform to that having to do with the animals, dogs, cats, and additional animals shipped to research facilities if they are less than 8 weeks of age.

There is one other change in this amendment and that is the proviso that is in the amendment at the bottom. That adds language "*provided, however*, that the Secretary may by regulation provide exceptions to this certification requirement, under such conditions as he may prescribe in the regulations, for animals shipped to research facilities for purposes of research testing or experimentation requiring animals not eligible for such certification."

The rest of the language is as it appears in the bill.

Mr. BOR. There is one other change, the change in the form of the certification.

The current bill would provide for a certification which states that the animal was sound and healthy. There was testimony received from several people which suggested a change in the form of certification. This amendment provides instead for a certification which states that the animal appeared free of any infectious diseases or physical abnormality which would endanger the animal, animals, or other animals during transit.

Mr. HOGAN. Yes, this is the one which Congressman Melcher was concerned about. Several of the research facilities also mentioned this.

Mr. POAGE. Give us the purpose of exempting rats, mice, guinea pigs, and so forth from the terms of the bill? Is that what this is intended to do?

Mr. HOGAN. Basically that is the thrust of the provision, to give some discretion to the Secretary. The third amendment which counsel has referred to is one which in the existing law talks about the certification of the veterinary, that is, that the animal is sound and healthy.

Mr. POAGE. We understand that. The rest of this language is intended to exempt the small animals. Is that what it is intended to do?

Mr. HOGAN. Yes, sir, mice, hamsters, and such animals.

Mr. POAGE. It leaves it up to the Secretary to impose regulations if he wants to as to those but does not require any regulations.

Mr. HOGAN. That is right.

Mr. MELCHER. The language as it pertains to the veterinarian certificate is a great improvement over what we now have. However, it seems to be limiting the use of the certificate—that is, the veterinarian looks at the animals to see whether they have an infectious disease which would endanger other animals during transit. That is a limiting factor and I see no reason for it.

When a veterinarian issues a health certificate he looks to see whether the condition of the animal is good as far as being able to be transported, but also the question of whether or not an infectious disease is present is the key reason for the health certificate. I mean that in the broadest form and not just for this bill. Health certificates are

issued to try to limit the spread of infectious diseases. That is the No. 1 purpose.

This language seems to say that the danger of the infectious disease is pretty much limited to the animal or animals during transit. I see no reason to say that. I think it defeats our purpose to say that.

I would just strike the words "during transit" and add "or cause or result in a public health hazard."

If it is necessary to require a rabies vaccination the Secretary can require it. Without that the Secretary can enforce a rabies vaccination if that is necessary or desirable.

Mr. POAGE. Is there any objection to the amendment from Mr. Melcher?

Mr. MELCHER. Insert language "or endangers public health."

Mr. POAGE. The Chair hears no objection

Mr. MELCHER. Then I move the adoption of the amendment.

Mr. POAGE. Is there any objection to adopting the amendment as amended?

The Chair hears no objection. It is therefore approved.

Does this cover all of 10?

Mr. MELCHER. It does not affect 10(c).

Mr. BOR. No.

Mr. POAGE. This is only (b). This is a substitute for (a) and (b).

Mr. BERGLAND. There is no objection of section (c) from anybody, is there?

Mr. POAGE. If nobody has any objection to section (c)—counsel did have some comments on section (c).

Mr. HOGAN. Just an explanatory statement for the benefit of the members, Mr. Chairman.

Mr. POAGE. If there is no objection to section (c) or section (d) then let's take (c). If there is no objection (c) is approved.

Mr. BERGLAND. There are a number of questions raised on (d).

Mr. POAGE. Any comments on (d)?

Mr. SEBELIUS. The suggestion with regard to the air transport boys, they have enough facility to take care of them. The counselor is liable to have them shipped back to him at his expense.

Mr. POAGE. That seems reasonable to me.

Mr. SEBELIUS. After word "charges" "any animal not claimed within a period of 48 hours."

Mr. POAGE. Is there any objection? The Chair hears no objection. It will be included.

Mr. HOGAN. The amendment suggested for line 13 in that same subsection is mainly technical, Mr. Chairman. You can add it or not, as you wish.

Mr. SEBELIUS. I would move that change, also.

Mr. POAGE. Is there objection? The Chair hears none. It will be approved.

Is there anything further on section 10? If not, section 10 will be approved.

We will not be able to finish this today but I do want to thank those of you who have been here because we have made significant progress.

I want to call attention to the fact that the latter part of this bill has to do with dog fights. There is considerable support for that.

However, the Judiciary Committee has a bill before it with regard to dog fights.

I talked with Mr. O'Neill and at one time he thought there was no objection to our proceeding but he then asked that we give him time to give this further consideration. I have heard nothing further but I am sure we will have his comments by the time of our next meeting.

I wanted you to be aware of the fact the Judiciary Committee does make some comment with regard to our jurisdiction over this phase of the bill. We will take this up at our next meeting.

At the first opportunity we feel we can get attendance we will try to complete action on this bill. Thank all of you very much.

The subcommittee now stands in recess.

[Whereupon, at 12 noon the subcommittee recessed.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

WEDNESDAY, NOVEMBER 12, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:15 a.m., pursuant to call, in room 1301, Longworth House Office Building, Hon. W. R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Bergland, Litton, Nolan, Weaver, Harkin, Hightower, English, Fithian, D'Amours, Sebelius, Symms, and Hagedorn.

Staff present: Robert M. Bor, counsel; William A. Imhof and John E. Hogan, associate counsels; Nick Ashmore, staff assistant; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; Perry Shaw, Anita Brown, and Wanda Worsham, staff assistants.

Mr. POAGE. At this moment, we are two short of having a quorum. If there are no objections by the members present, we will talk informally until our quorum is complete.

Let us commence the business of the day.

Mr. BOR. We have worked up to section 11, but have not started that yet.

Mr. HOGAN. Mr. Chairman, there is a sheet before each of the members indicating what the committee action was as of October 8.

Mr. POAGE. Section 11 is consultation and cooperation with other Federal agencies.

Mr. BERGLAND. Mr. Chairman, I do not recollect any comments or constructive criticism of this section from anybody. Were there any?

Mr. POAGE. Does anybody have any suggestions as to section 11?

Mr. HOGAN. There was only one comment, Mr. Chairman, during the hearings. That was from the CAB. They urged the Secretary to consult with CAB before promulgating standards. They indicated that the language of the act would appear to take care of this, so this could be expanded on in the report accompanying the bill, if this is reported. There is no need, I do not believe, based on the testimony, for any change as such.

Mr. POAGE. All right. We agreed to that.

We will pass on to section 12. Are there any suggestions to amend this section?

Mr. BOR. There is a typo in line 8; it should read second sentence.

Mr. POAGE. If there is no objection, we will make that change.

Mrs. Stevens recommends that violators be tried before the U.S. magistrates. It may already be permitted, but the subcommittee may wish to insert it to resolve any ambiguity.

Mr. HOGAN. This is taken care of, Mr. Chairman, in the following section, section 13. It is only mentioned here because there was some question initially, if the subcommittee wished to take action on this, whether they would want to put it into section 16 of the existing law, or whether they would want to put it in section 19.

If the subcommittee is to take action on this, I think the proper place for it to appear would be in section 13 of this bill—that is in section 19 which you are amending of the existing law. I do not think there is any need to do anything with this.

Mr. POAGE. What is the subcommittee's wish as to whether these proceedings ought to be before a magistrate?

Mr. BERGLAND. I am not a lawyer, so I am searching for help. What does that mean?

Mr. BOR. At the moment, the criminal features of the act would be enforced by the U.S. attorneys before the U.S. district court. Frequently, when an action has to be instituted through this type of procedure, the U.S. attorneys are perhaps more reluctant to institute criminal proceedings. If you can bring it before a U.S. magistrate, it makes it easier to institute actions for criminal penalties. Frequently the U.S. attorney is willing to have the Department of Agriculture representatives, the people from the General Counsel's office, or the administrative agency institute the proceedings under the authority of the U.S. attorney, which he is reluctant to give when the action is before U.S. district court.

Mr. BERGLAND. This would have the effect of removing some of the traffic in the U.S. court?

Mr. BOR. It would have the effect of removing traffic in the district courts, and perhaps make it easier to bring criminal proceedings.

Mr. BERGLAND. It seems to me that makes sense.

Mr. POAGE. It seems to me it is desirable to get everything we can out of the Federal district courts.

What, of this, would come under State courts?

Mr. BOR. These are all Federal offenses, so it would not be before a State court.

Mr. POAGE. It would not normally be before the State courts; but how much of it could be before the State courts? Every State court has to enforce Federal statutes.

Mr. BOR. The Federal courts enforce the Federal statutes rather than the State courts.

Mr. POAGE. I know that is the practice. I mean that a State court cannot ignore the Federal statute.

Mr. BOR. They would have no jurisdiction to enforce the Federal statute. In a criminal proceeding, the criminal process can only be before a Federal court.

Mr. POAGE. I recognize that these crimes are crimes before the United States, and not crimes against the separate States. A lot of this is simply regulations.

Mr. BOR. The only thing that would be before a U.S. magistrate would be the criminal proceedings.

Mr. HOGAN. My understanding, as far as the U.S. magistrate is concerned, it does give this flexibility. If an individual goes before a U.S. magistrate and he demands a jury trial, then he has the right to go into court.

Mr. POAGE. I know he does, but does anybody object to letting the magistrate handle as much of this as he can? We have burdened our Federal courts. Each year we are called upon to add materially to the number of judges and courthouses. If we can alleviate that situation, all to the good. Has anyone any objection to using these magistrates?

If there is no objection, we will proceed that way.

The Chair is advised that we do have a quorum. Mr. Bergland moves that the committee approves the informal action that has already been taken. Is there any objection? The Chair hears none, and it will be approved.

Mr. BOR. Would the staff have permission to insert that language at an appropriate place?

Mr. POAGE. Certainly.

We will take up section 13. This involves violations by dealers, exhibitors, and operators of auction sales, cease and desist orders.

The Interstate Commerce Commission has some comments.

A new subsection is suggested for (d) which just makes it apply to the code.

Mr. BOR. That is right, sir. On page 7, the last line provides that in review of civil penalty actions certain sections of the United States Code shall apply. The proposed amendment that you have on your desk would change the provisions of the existing laws so that there would be the same references there to the United States Code as appears in the bill before the committee.

The current law has a reference to different sections of the United States Code. It would seem more appropriate to refer to these particular sections.

Mr. POAGE. If there is no objection, we will use the reference to the the Code.

The Chair hears none; it will be included.

Is there anything else on that section?

Mr. BOR. A question has been raised with respect to the civil penalty procedures. They differ from the civil penalty procedures that currently apply, so that you have one system that applies to violations under the current act, and another system as to violations of the new provisions added by these amendments.

A suggestion has been received to try to bring the two systems into conformity with one another.

The distinction is that, under the current law, before you can impose a civil penalty as such, an administrative law judge must issue a cease and desist order to a violator. A civil penalty would apply only if there was a failure to comply with the cease and desist order.

Under the bill before the committee there is no provision made for the first step. You go immediately to the second step, to a civil penalty for those who have violated the provisions of the act. Those relate to violations that occur under these amendments.

The committee may wish to consider changing the existing law to make it follow the procedure that is set out in the proposed amend-

ment, or, on the other hand, changing the amendment so that the violations of the amendments would follow the procedures that we now have under existing law.

It may seem advisable, for the purpose of a simplified procedure, to provide just for the civil penalty, but this is a matter for the committee's consideration.

Mr. POAGE. You have a civil penalty of \$1,000 for each violation.

Mr. BOR. It is not more than \$1,000. The administrative law judge would have discretion to take account of the nature of the violation, and he could set it at a lesser figure.

In the existing law, they have a flat \$500 set out as the civil penalty, and there is no discretion to alter that to fit the nature of the offense.

Mr. SEBELIUS. I would move that we take the civil penalty up to \$1,000 and make it the same for the act as it is now plus the amendment, so we will have one consistent item on the civil penalties.

Mr. POAGE. Are there any other comments?

If there are no objections to Mr. Sebelius' suggestion, it will be inserted.

Mr. FITHIAN. Just one question of counsel.

In what we are about to do, would the minimum penalty concept be dropped?

Mr. BOR. The administrative law judge would determine what the minimum penalty would be, but he could not go above \$1,000. It could go as low as \$5.

Mr. POAGE. Does the gentleman object?

Mr. FITHIAN. No, I am not objecting.

Mr. POAGE. If there is no objection, we will adopt the Sebelius proposal.

Mr. BERGLAND. Mr. Chairman, on page 9, line 5, the ICC has recommended that we add the word "knowingly" after the word "to." I note that the other sections, or subsections, consistently deal with the question of whether or not persons knowingly do certain things—I am sorry, I am ahead of myself.

Mr. POAGE. We will move to section 14, with regard to effective dates, section 24 of the act.

As I understand it, you want to keep section 14 consistent with what you anticipate what will be done in section 24?

Mr. HOGAN. The clerk is handing out a recommendation prepared by the Department that would put effective dates in for depending on when the regulations are issued. Based on their experience, when the original enactment was passed, they found that certain portions of these amendments would take somewhat longer to implement due to publication, and this kind of thing. The amendment that you have to section 14 is language prepared by the Department to phase in.

Mr. POAGE. Might I suggest that all of this is based on calling this the "Animal Welfare Act Amendments of 1975." I think it is rather clear that we are not going to get this enacted into law in 1975 because the Rules Committee has already given us a deadline. Shouldn't we change this to 1976 all the way through the bill?

Mr. HOGAN. If we could make conforming technical amendments to conform with what we understand to be the progress of the bill, the committee could give us that flexibility.

Mr. POAGE. With that understanding, we will proceed.

As to these suggested amendments, they merely relate to the dates that certain phases become effective.

Is that right?

Mr. HOGAN. Yes, sir.

Mr. POAGE. Does anybody have any objection to these amendments as suggested?

The Chair hears none. They will be adopted.

Mr. BOR. Mr. Chairman, could I go back to section 13?

Mr. POAGE. Yes.

Mr. BOR. The Department had made a suggestion that appears on page 8 of this summary that you have before you that would make the civil penalties apply to anybody who violates subsection (c) of the act.

The way it is now drafted, it does not seem to reach all of the violators, only some of the violators.

What they would do is to add on page 7, line 13, where it says, "Any intermediate handler or carrier that violates any provision of section 13 of this act * * *," these words: "* * * or any other person not subject to subsection (a) of this section, or section 20 of this act, that violates subsection (c)."

Anybody who violates subsection (c) would be subject to the civil penalty provision.

Mr. POAGE. Why was it originally written as "Any intermediate handler or carrier * * *"? Aren't they the only ones who could violate it?

Mr. BOR. I think it would probably also catch some of the officials that might work for the carriers who are responsible for the actions that gave rise to the violations.

Mr. POAGE. Do you mean that what you are trying to do here with this amendment is to make the President of American Air Lines responsible—make him guilty of a crime in connection with a mistreatment of a shipment of animals at Washington airport?

Mr. BOR. This would not be addressed to the criminal penalties. It would be addressed only to the civil penalty.

Mr. POAGE. Are you going to make the officer of the company liable? The company is liable. We want the company to be liable, but what is the justification for making that officer sitting over in Chicago, who knows not one thing in the world about that treatment, liable?

You are going to make the company pay a penalty, if they do not handle the shipment properly. That is fine. However, to make some individual, just because he is a corporate officer liable for another penalty, seems to me to be stretching this thing too far. That is the kind of thing that gets us into trouble with these bills, it seems to me.

Mr. BOR. I do not think it is really addressed to the man who sits in Chicago, but rather the man who was on the scene and who was the person responsible for the violation.

Mr. POAGE. Who do you say you are going to make responsible? Read it to us.

Mr. BOR. It says, "* * * any other person * * * that violates subsection (c) of this Act."

That man sitting in Chicago would not be the violator.

Mr. POAGE. You have already got the intermediate handler; you have got the carrier. They are named. They are responsible. They

have got to pay the fine if their agent acts wrongfully. But who do you mean by any other person unless you mean corporate officials?

Mr. BOR. When you are dealing with an intermediate handler or carrier, you are addressed really to the corporation. It would not cover the person working for the corporation who is the one who was actually on the scene.

Mr. POAGE. Do you want to assess a penalty of \$1,000 against American Airlines and also assess a like penalty against the fellow who physically handled the box? Do you want to levy a \$1,000 fine against a fellow who is drawing \$3 an hour?

Mr. BOR. That is a question that I am raising to the subcommittee.

Mr. POAGE. If we were to bring such a bill out, we would have problems. There is a lot of prejudice against these bills anyhow.

I happen to believe in some controls over the way to handle these animals. I think we ought to have it. However, I think, if we go to those extremes, we are not going to get anything.

It looks to me like we had better get something that we can pass and enforce rather than try some kind of punitive action here.

Mr. SEBELIUS. Definitely. I am sure that American Airlines, which we are using as an example, or whoever else is going to get civil penalty, are going to have the proper attitude toward whoever their employee was that made the violation. That would be something they can do within their own organization.

Mr. D'AMOURS. I would like to inquire of counsel whether the requirement of knowledge on the part of the airline is present, is it not? There is a knowledge requirement before they be violated?

Before an airline can be convicted of a violations case, wouldn't there be a requirement that it be proven that they had knowledge of the act—that they were committing the violation?

Mr. BOR. When you are dealing with civil penalties, it appears that the word knowingly or intentionally is not part of the offense.

When you are dealing with a criminal penalty, it appears that it is.

In other words, before you can bring criminal proceedings, you would have to show that it is a known violation. But, with regard to the civil penalty provision, if you look on page 7, it says "any intermediate handler or carrier that violates any provision of Section 13 of the Act." It does not use the word "knowingly" violates.

Mr. D'AMOURS. As a matter of fact, though, wouldn't a civil magistrate, before assessing a fine, consider whether or not there was knowledge? Wouldn't that be a part of his consideration before he actually assessed a fine?

Mr. BOR. This would be before an administrative law judge.

Mr. D'AMOURS. In either case?

Mr. BOR. The extent of civil penalty could well depend on the knowledge that the carrier had.

Mr. D'AMOURS. The reason for my question is this: I agree with the comments made that, if we have sufficient sanctions against the—the example used was airline—that they ought to control their employees. I wondered about the possibility where the airline would escape any censure, any violation, any crime, because of lack of knowledge—the knowledge being that of the employee who was not covered by section 8.

In that case, shouldn't we give the administrative judge some tool so he could get at the, in fact, culpable party?

Is that a possibility?

I agree with what the chairman and Mr. Sebelius have been saying. The companies would control their employees if the companies themselves were subject to the fine.

But, if the company could avoid the fine because they could show a lack of knowledge, and you had an obviously guilty and knowledgeable employee who was not covered——

Mr. POAGE. The company cannot avoid knowledge when their employee has knowledge. The company has knowledge whenever their employee has knowledge.

Mr. D'AMOURS. If that were the case, Mr. Chairman, then I would agree with you entirely. I wanted to be sure that the administrative judge had somebody that he could get his hands on.

Mr. POAGE. If the agent had knowledge, the company had knowledge.

Mr. D'AMOURS. If that is the way it would work, then I would have no objection to what you are doing.

Mr. POAGE. Does anybody want to put the amendment on what has been suggested?

The Chair does not hear any movement to put it on, so it will not go on.

Mr. BOR. I think the subcommittee had adopted the proposed amendment that deals with the change in the effective date. This was laid before the subcommittee, and I do not recall whether the subcommittee had taken any action to adopt it.

Mr. POAGE. We agreed to that.

Mr. BOR. The next item relates to the annual report of the Secretary.

There has been some suggestion that, in making the annual report, it should be developed in consultation with other Government departments such as the Department of Transportation.

Mr. BERGLAND. Mr. Chairman, I think this is a rather important proposition. Carriers are obliged to file reports with various agencies from time to time. I understand that much of the information they provide can be given to the Secretary, and they need not go back to be paneled again. This can reduce some of the redtape that would otherwise be imposed upon them.

I am not quite sure on the language, but I think it is a point we ought to consider. Do you have language prepared to eliminate some of the duplication that otherwise would arise?

Mr. BOR. We could provide that these recommendations and conclusions would be presented after there had been consultation with other regulatory agencies that have jurisdiction over them.

Mr. POAGE. That does not exactly refer to what Mr. Bergland was suggesting, it seems to me.

Mr. BERGLAND. I would not object to having the Secretary authorize to inquire of the FAA; for example, as to certain information the Secretary may need in compiling his report. The FAA may have what he needs, because carriers report to the FAA from time to time on shipping matters.

Mr. POAGE. But what they are proposing is to require consultation between the Secretary and them.

Mr. BERGLAND. That would probably eliminate some of the duplication that might otherwise occur.

Mr. POAGE. How?

Mr. BERGLAND. If the Secretary counsels with the FAA, they may say we have this information. You do not have to put that in your request.

Mr. POAGE. All you were requiring about what you were reading was that there be consultation between the two agencies. Consultation means phone somebody six times, get him on the seventh call, agree to meet, postpone it a few times, and so on.

Mr. BERGLAND. I worked in the Department of Agriculture 7 years. I will admit that what you say is unfortunately all too accurate. However, what I am getting at is to try to devise language that would set aside the need for the Department of Agriculture to go over to the carriers and get the same information that had already been submitted.

Mr. POAGE. I agree. I do not know that we need to have all these reports. Some of these reports are apparently already available in other agencies. In other words, we get the Department of Agriculture requiring reports that the CAB already reports, as I understand it.

Mr. HOGAN. At the bottom of the page on section 15, you are merely adding one additional requirement to the report that is in existence, in existing law, requiring three specific items to be submitted by the Secretary in a report to the Congress each March. What you are doing here is adding a fourth item having to do with recommendations and conclusions concerning aircraft environment.

Mr. POAGE. That is all you do if you leave it like it is written.

Mr. HOGAN. That is correct.

Mr. POAGE. But if you begin to put these amendments on you are then requiring consultation, you are requiring meetings, you are requiring duplication of reports.

Mr. HOGAN. Yes, sir.

Mr. POAGE. If we leave it alone, we have just said to the Secretary, in your report, just give us the recommendations and conclusions in regard to the aircraft and what you have found out about the transportation of live animals. That is all we are saying to him by the bill as it is drawn. Personally, I do not see any objection to the bill as it is drawn in that respect.

Mr. BERGLAND. On that point, could we contain language in the committee report that would indicate that we would expect the Secretary of Agriculture would consult with, appropriate agencies?

Mr. HOGAN. This is a specific recommendation of the FAA. They wanted some protection so that there was some dialog before the Department would make its recommendation to Congress without some discussion. That was the reason this suggestion was made, if the committee wanted to go along with it.

Mr. SEBELIUS. Mr. Chairman, I move we leave it like it is.

Mr. BERGLAND. I have no objection. I just do not want the Department of Agriculture to construct some fool report that they do not know anything about.

Mr. POAGE. If there is no objection, we will leave the language like it is.

The Chair hears no objection to that.

If there is no objection, we will insert in the report language such as Mr. Bergland suggested here.

The Chair hears no objection to that.

We are ready to move on.

Mr. BOR. The next section, section 16, dealing with section 26 of the act, would make it unlawful for any person knowingly to sponsor or exhibit any animal in an animal fighting venture.

The threshold question is the issue of whether the subcommittee wishes to include this provision in the bill.

If you do wish to include this in the bill, one of the suggestions made is that when you get to subparagraph (b), that you add the word "knowingly" before the words "to sell, buy, or transport," so as to make it clear that there would be an offense only if the person knowingly violated these provisions.

I think that was a typographical error, because the word "knowingly" was used in subsection (c), but it was omitted in subsection (b).

Mr. BERGLAND. It is also used in subsection (a).

I move the word "knowingly" appear on line 5 after the word "to".

Mr. POAGE. That reads, "to knowingly sell, buy, transport," and so on?

Mr. BERGLAND. Yes, sir.

Mr. POAGE. Is there objection?

The Chair hears none. The word "knowingly" will be inserted.

Mr. HIGHTOWER. Mr. Chairman, I would like to ask a question for clarification.

I seem to remember some discussion at the time of the hearings. Does the term "or other animal" include fowl?

Mr. POAGE. I think clearly it does.

Mr. SYMMS. Mr. Chairman, if it is in order, I move to strike this whole section—the part on fighting. I am not an advocate on dog-fighting or cockfights, but if we leave this section in we are going to be asking the Department of Justice for a whole turn of things in law enforcement. They have enough to do without adding this to their list. Let's leave this up to the States. That is my position on it.

The Justice Department has its hands full with the drug problem and everything else they are involved in. This would be one more responsibility they would have to contend with. They would have to go out and break up these cockfights wherever they have them across the country.

I think we could very well leave it out of the bill.

Mr. BERGLAND. Would the gentleman suggest we leave the drug law enforcement up to the States as well?

Mr. SYMMS. Yes; probably we could.

I think the Justice Department has plenty to do. You gentlemen would agree with me, wouldn't you?

Is the Department of Agriculture going to enforce this?

Mr. POAGE. Yes.

Mr. SYMMS. How is the Department of Agriculture going to go out and enforce it?

Mr. HARKIN. We are talking about movement in interstate and foreign commerce. This under the purview of the Federal Government, not the State government. I think that is at what the gentleman from Minnesota was getting, you can have State laws if you want. In many cases they do not cover the interstate transfer of things. For their purposes, they can only take care of it if it happens within their locality.

Mr. SYMMS. I withdraw the amendment if there is no support for it.

Mr. POAGE. The gentleman withdraws the amendment.

Is there any further suggestion of change to section 26?

Mr. HIGHTOWER. It has been called to my attention by counsel, in response to my question a minute ago about chickens, that under subparagraph (f) (1) animal fighting venture is defined, and under subparagraph (5) animal means any live dog or other mammal. That would appear to exclude chickens.

Mr. BOR. It excludes chickens. So cockfighting would not be covered by this bill. It would apply, however, to dogfighting ventures.

Mr. BERGLAND. It would seem to me—cockfighting ought to be included. If we are going to deal with dogfighting—

Mr. POAGE. Most of the States have laws that there are no cock-fights. I don't know what States do not. Even Texas has a law against it.

Mr. BERGLAND. In the light of that, it would seem to be appropriate that we add the proper words. How do you define a chicken for this purpose?

Mr. SYMMS. You are opening a Pandora's box.

Mr. HOGAN. I might point out, Mr. Chairman, that in the newest territories added to the United States—most recently the areas in what was Micronesia—cockfighting is, I guess, one of the principal sports in that area.

This is in Guam, Tinian, Saipan—some of the islands in the newest territories added to the United States.

Mr. BERGLAND. It seems to me, Mr. Chairman, that if it is against the law to sponsor a cockfight in the State of Texas, it ought to be against the law to transport them across State lines. I would argue that it be included. I am not prepared with an amendment. I do not know how you would define it exactly.

Mr. POAGE. We can do that all right.

Mr. HARKIN. Just include the word "fowl," as "any live dog, fowl, or other mammal."

Mr. POAGE. You get into a great deal of trouble when you try to cover everything. Sometimes there are badger fights.

Mr. HARKIN. Badgers? They are mammals, aren't they? They would be defined under subsection (5).

Mr. BERGLAND. Can counsel or anyone help us on this? Was there a reason why fowl were not added?

Mr. BOR. I think probably the reason is one that Mr. Hogan mentioned—it is a commonly accepted sport in certain areas.

Mr. HARKIN. I would say that if they wanted cockfighting in Guam or Micronesia, let them. This farm amendment would simply mean that they cannot ship them to other parts of the country. If they want to raise them there, or if any State wants to pass a law allowing cock-fights, let them.

Mr. SEBELIUS. You are stating that is interstate commerce. You do not have to prove that transportation.

Mr. POAGE. We have declared in here that everything is interstate commerce.

I am afraid, if you pass a law here, you have made it applicable to Guam and Samoa and everywhere else. There is no such thing as commerce that is not interstate any more, that I know of.

Can you give me a single example of anything—any commercial transaction—that is not interstate?

Mr. HARKIN. I am sure, Mr. Chairman, that there are examples of it that are totally within the State border and do not have anything to do with interstate commerce.

Mr. POAGE. But they are declared to be interstate commerce. This bill declares almost everything to be interstate commerce.

Mr. HOGAN. There is a special definition on page 11, in the middle of the page, for this particular section, as to what would constitute interstate or foreign commerce for the purposes of section 26. I will read it:

The term "interstate or foreign commerce" means (A) any movement between any place in a State to any place in another State between places in the same State through another State; or (B) any movement from a foreign country into any State.

Mr. ENGLISH. Mr. Chairman, in section 4, it indicates any territory. Those territories that now allow cockfighting could not transport fowl between those territories.

Mr. HOGAN. And not from a foreign country into those territories.

Mr. ENGLISH. The law would include even the territories. If they had to bring fowl in from a foreign country into one of the territories or transporting fowl between territories—under this law they couldn't do it.

Mr. HARKIN. If they can go ahead and raise their own cocks, OK.

Mr. POAGE. I wonder if we are at a position where we might bring the bill to a point where we could move to report the bill?

Mr. HARKIN. I would like to make an amendment to that section.

I move that we amend section 26, page 11, line 24, by inserting after the word "dog", the following: ", fowl," and then you can continue on with the rest of the sentence.

Mr. SEBELIUS. I move the previous question on the amendment.

Mr. SYMMS. Mr. Chairman, I oppose that. I think it is a mistake to put it in the bill. We are going to stir up a whole new problem area. Since I am against the bill, I'll not object to its inclusion but I think you are making a mistake.

Mr. HARKIN. I think it is going to be put in some place anyway.

Someone is going to attempt it, and I think we ought to face up to it right now. If it does get included on the floor—if the bill makes it that far and gets accepted.

Mr. POAGE. All those in favor of the amendment of Mr. Harkin, say "aye." All those opposed, "nay."

Will those in favor hold up your hands? Aye—3. Opposed—5.

The nay's have it. The amendment is not adopted.

Mr. Sebelius moved to report. Well, we cannot do that. We will have to rewrite the bill. We ask that the staff redraft the bill completely with the adopted amendments in it. We will report to the full committee the rewritten bill.

Mr. SEBELIUS. Fine.

Mr. POAGE. All those in favor say "aye"; opposed, "nay."

The ayes have it.

Thank you, gentlemen.

Mr. BERGLAND. Have we terminated our business, Mr. Chairman.

Mr. POAGE. That is right. We will not take any further amendments to the bill. But go right ahead, Mr. Bergland.

Mr. BERGLAND. I note that the Transport Association has suggested that we change the definition of interstate commerce to conform to the Interstate Commerce Act. The Postal Service has recommended certain technical changes. We did not consider those. Is there a reason? Should we take them up, or not?

We could do it in full committee, if it is important.

Mr. POAGE. Yes; I think we can, and we may want to take them up in full committee.

Mr. BOR. Frankly, I do not know what the merit is of these two proposals.

Mr. BERGLAND. I will talk with counsel later.

Mr. POAGE. We will present any defects that have been overlooked in the full committee.

In fact, I would like to discuss in the full committee the very first of this bill. The bill goes exactly the contrary to what I have urged in legislation for many years.

We write a Fourth of July speech in the first section. I do not know the necessity of it. You then turn around and define these things. I think we have got a perfect right to define them.

However, we start out in this bill by saying that it is also essential for humane reasons to prohibit certain animal fighting ventures. The Congress hereby finds that animals and activities which are regulated under this act are either in interstate or foreign commerce. That is the part I wanted Mr. Harkin to hear.

We are sitting here finding that this is in interstate and foreign commerce. I don't think it is any of our business to make that finding. That is a matter of fact.

Mr. BOR. Mr. Chairman, the subcommittee at your suggestion had deleted that provision from the bill.

Mr. POAGE. We have already done that. Fine.

The subcommittee will stand in recess subject to the call of the Chair. We will meet as quickly as we can and try to bring this to the full committee.

[Whereupon, at 11:10 a.m., the subcommittee recessed, subject to the call of the Chair.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

WEDNESDAY, JANUARY 21, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman of the committee) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Melcher, Mathis, Bergland, Rose, Litton, Breckinridge, Nolan, Weaver, Baldus, Krebs, Harkin, Bedell, McHugh, English, Fithian, Jenrette, Thornton, Wampler, Sebelius, Findley, Thone, Symms, Peyser, Heckler, Kelly, Grassley, Hagedorn and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsel; William A. Imhof and John E. Hogan, associate counsels; Nick Ashmore, staff assistant; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order.

The scheduled business for our first meeting of the committee's second session includes two bills, one from the Subcommittee on Tobacco, and the other from the Subcommittee on Livestock and Grains.

Before proceeding with the legislative business at hand, the Chair has the pleasure of introducing and welcoming to this committee, the distinguished gentleman from Arkansas. Mr. Thornton, who has submitted his resignation to the House Committee on the Judiciary, and received assignment to the Committee on Agriculture.

Mr. Thornton is, as I think some of you know, a distinguished former attorney general of his State. He was an outstanding member of the Committee on the Judiciary, and I know he will make the same important and valuable contribution to the work of this committee that he has throughout his service in the House.

Also, we would like to report to the committee that, by action of the committee's Democratic caucus, it has been recommended that Mr. Thornton be assigned to the Subcommittees on Livestock and Grains, Oilseeds and Rice, and Forests.

Without objection, he will be assigned to those subcommittees as a majority member.

On the majority side we have had two vacancies since the beginning of the last session of this Congress. The Chair is very pleased by the assignment of Mr. Thornton to this committee and by his willingness to accept this assignment. I know all the members will find him an extremely valuable member. Mr. Thornton, we look forward to your service with great pleasure.

The Chair would like to make two preliminary announcements. We have a tentative schedule, which will be announced today, setting a course for the committee in the coming weeks. The Chair is of the opinion that it might be better if further consideration of grain inspection be postponed for a short time until the General Accounting Office's report becomes available.

The committee has been advised that the General Accounting Office anticipates meeting its scheduled deadline of February 15. At least, that is our present information. Rather than schedule markup sessions on that proposed legislation in the interim, it seems wiser to await the submission of the GAO's report. In this way the committee would have the benefit of any information contained in that report during its deliberations on the bill.

It is therefore my intention to schedule all further meetings on grain inspection after February 15.

The Chair had earlier indicated to the House and members of the committee that we would begin public hearings with respect to food stamp recommendations promptly after the beginning of the new year.

I have tentatively scheduled January 28 as the first day of the hearings, January 29 and February 2, if necessary, will also be set aside to hear Members of Congress only. This will be followed on February 10 and 11 by witnesses from the Department of Agriculture. Subsequent hearing dates will be set for the appearance of public witnesses.

On February 3, the committee will again welcome Secretary Butz for a discussion of the general agricultural outlook. In addition the Secretary will respond to questions or inquiries from the members. This meeting, as members may recall, had been previously scheduled for the month of December; but it was not possible to arrange it before the end of the session.

It will also be announced today that February 17 and 18 have been set aside for public hearings on H.R. 11339 by Mr. Wampler, which is entitled the National Agricultural Research Policy Act of 1976.

Subcommittees on Conservation and Credit and Rural Development will be meeting on January 27, 28, and 29 at 10 a.m. in joint session with the Senate Subcommittee in room 322 of the Russell Senate Office Building. On February 4 and 5 at 10 a.m. these hearings will continue in room 1301, of the Longworth House Office Building. The hearings will discuss oversight and management of the Farmers' Home Administration, and the authorization for the FHA. They will be chaired jointly by Mr. Bergland and Senator Clark.

Are there any questions regarding our proposed schedule?

There is another matter that I want to bring briefly to the attention of the committee. A week from today, on January 28, at 2 p.m., we will have a full committee briefing, which will be open to the public, on the Budget Act of 1974 and its impact on the work of this committee. That briefing will be conducted by our staff and the staff of the House Budget Committee.

There are some extremely important aspects of the Budget Act which become fully effective this year with respect to the schedule and work of the committee. I hope that members will take the time to attend that briefing since it is rather important to our scheduling of legislation, particularly in the first months of this session.

We are required by the Budget Act, for example, to submit all budget outlay recommendations and estimates by March 15, and to report all

authorization bills for fiscal year 1977 to the House no later than May 15.

Because expenditure authority acts cannot be reported prior to May 15, the Budget Act plays a very definite and powerful role in terms of the scheduling of our committee business. We will be asking the subcommittee chairmen and their ranking minority members in particular to attend in order to estimate their own subcommittee work in these early months.

The matter that is scheduled for action by the committee is from the Subcommittee on Livestock and Grains. It is the bill H.R. 5808, the Animal Welfare Act amendments.

The Chair recognizes the distinguished chairman of the subcommittee, the gentleman from Texas, Mr. Poage.

Mr. POAGE. Sheets containing seven technical amendments to this bill are being passed out to you. I am going to ask unanimous consent that we consider the seven technical amendments. I do not think that anyone has any objection to them, Mr. Chairman. I think it will be a more orderly procedure if we can accept these amendments before we go on with the bill. Does anyone want to discuss them?

If the members do not want to discuss them, I would move the adoption of the technical amendments.

Mr. PEYSER. I have no objection, Mr. Chairman, but I would like to take a moment to glance at these.

Mr. POAGE. They have just been presented this morning by the staff that has done the reviewing.

[The technical amendments referred to follow:]

TECHNICAL AMENDMENTS

1. Page 1, line 8, insert "(a)" after the words "amended by" and page 2, line 12, strike the final period and insert ", and (b) inserting in paragraph (g) immediately after 'food and fiber' the following: 'With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes'".

Explanation.—This makes clear that hunting, security, and breeding dogs are covered by the Act within the definition of the term "animal".

2. Page 2, line 5, insert after "retail pet store" the words "except such store which sells any animals to a research facility, an exhibitor, or a dealer."

Explanation.—This reinstates language currently contained in the Act which was inadvertently omitted in the amendment to the definition of dealer.

3. Page 3, line 2, insert after the word "person" the words "including a department, agency, or instrumentality of the United States or of any State or local government."

Explanation.—This makes clear that delivery of animals to airports or other facilities maintained by a Federal or State agency are covered by the provisions that apply to intermediate handlers.

4. Page 5, line 2, insert after "United States" the words "or of any State or local government."

Explanation.—This makes clear that delivery of animals by State or local governments to carriers are covered by veterinarian certificate requirements.

5. Page 6, line 9, insert after "48 hours" the words "after notice to the consignee of arrival of the animal."

Explanation.—This makes clear when the 48-hour period begins within which C.O.D. charges must be paid.

6. Page 7B, line 2, insert "knowingly" before the word "violates".

Explanation.—Under this amendment a violation would be considered a criminal offense only if the violation was a knowing violation.

7. Page 12, delete lines 11 through 16.

Explanation.—A comparable provision is already contained in the Act.

The CHAIRMAN. The Chair would ask unanimous consent that the bill H.R. 5808 be considered as read, put in the record, and open for amendment at any point, and, further, without objection the technical amendments will be considered as being offered. After the members have had an opportunity to examine them, the bill will be open for discussion.

Mr. BERGLAND. I would like to inquire of the gentleman from Texas—do these amendments in any way alter the decisions that were agreed to in subcommittee?

Mr. POAGE. I was told by the staff that they do not. They are just amendments to make perfectly clear what is wanted, and not to change any substantive part of the bill.

Mr. BERGLAND. Thank you.

The CHAIRMAN. Is there any discussion regarding the proposed technical amendments?

Mr. HARKIN. I have one that looks like it is more than just a technical amendment.

In the fifth item, it reads to insert after "48 hours" the words "after notice to the consignee of arrival of the animal." In the original bill, I know we had this discussion in the subcommittee, and that is for any animal not claimed within a period of 48 hours. I wonder if that is not more than just a technical change. One had it not claimed within a couple of days, the other was after notice to the consignee. What is constructive notice? What is actual notice? Is it constructive notice or actual notice?

Mr. IMHOF. If the committee desires, we would accommodate a further amendment. What was intended by this technical change was just to make it clear that it was from actual notice.

Mr. HARKIN. Actual notice?

Mr. IMHOF. Yes, sir.

Mr. HARKIN. So, in other words, there has to be some kind of a receipt or something like that to make sure that actual notice was given rather than just something that was sent out.

Mr. IMHOF. In the case of railroads, sir, it is frequently accommodated by telephone, and written record is made of the telephone call, but this could be left to the discretion of the Secretary promulgating regulations under the statute.

Mr. POAGE. Mr. Chairman, isn't it clear that if you don't put something there, there is no way of knowing just when there is a failure to claim the animal.

Mr. IMHOF. The idea was to make clear what we understood the original intention to be.

The CHAIRMAN. The original language left it rather vague as to when there was a failure to claim the animal. This is an attempt, I gather, by staff to set a definite time period during which the animal had to be claimed.

Will the staff please read the original language, to which this is amendatory?

Mr. IMHOF. It is on page 6 of H.R. 5808 as reported by the subcommittee, Mr. Chairman. I will read the entire section beginning on line 3:

No intermediate handler or carrier involved in the transportation of any animal affecting commerce shall participate in any arrangement or engage in any practice under which the cost of such animal or the cost of the transportation

of such animal is to be paid and collected upon delivery of the animal to the consignee unless the consignor guarantees in writing the payment of transportation charges for any animal not claimed within a period of 48 hours * * *

The question remained, Mr. Chairman, as to when the 48-hour period began and we are simply trying to clarify that.

The CHAIRMAN. In other words, does it begin after the arrival of the animal at its destination or following notification of the consignee that the animal has arrived. This is an attempt to fix the time.

Mr. HARKIN. In other words, it will still read "for any animal not claimed within a period of 48 hours after notice to the consignee . . ."

The CHAIRMAN. That is correct. Without such language, it is not clear when that 48-hour period begins. Does it begin, for example, at the moment the animal arrives at this destination or after notice?

Mr. HARKIN. I had misinterpreted this.

Thank you.

The CHAIRMAN. Is there any other discussion on the technical amendments?

Mr. PEYSER. Mr. Chairman, I have a question on amendment No. 6 where it speaks of page 7B, line 2. It says "... insert 'knowingly' ...".

It seems to me, if it is the intent to bring action against people who violate this law, you really have just eliminated any punitive action whatsoever. It is like having a speeding regulation, and then someone violates it and knocks a man down and says that he didn't know about the speeding regulation, so he is not guilty as charged because he didn't "knowingly" violate the law.

Accordingly, someone could claim immunity to violation if this amendment goes through.

If the intent is to have a bill with some teeth in it and that is meaningful, the inclusion of that word seems to me to eliminate all the punitive measures in the bill.

Mr. POAGE. May I point out that the committee was not taking any specific action on this as I did consider the question of whether we were going to use criminal or civil penalties. We did decide that we would use criminal penalties and presume that the general understanding with criminal is that you cannot make a crime out of something that an individual doesn't know about.

Mr. PEYSER. I believe the standard is that ignorance of the law is no excuse.

Mr. POAGE. Ignorance of the law is certainly no excuse before the law in criminal procedures.

I take it staff was merely making this conform to the general rule of procedure, because at least 98 percent of our criminal law does require knowledge on the part of the perpetrator of the crime.

Mr. PEYSER. I would like to then direct to the staff this question: does the staff have any other legislation that either we have enacted or that you have seen enacted dealing with the establishment of a law that says "knowingly"?

Mr. IMHOF. Yes, sir.

There are a number of criminal statutes to that effect.

Mr. PEYSER. Enactments that we have passed in the Congress that use that terminology?

Mr. IMHOF. Enactments that we have passed this year?

Mr. PEYSER. Yes, passed by Congress, this year or in any other year.

Mr. IMHOF. Yes, sir. For example, the animal quarantine laws, There is a body of jurisprudence that has grown up to the effect that the term "knowingly" requires an intention to commit the act—but not a requirement that you know the act is wrong. Whereas, a requirement that the violation be "wilful," which appears in some criminal statutes, might require some knowledge that the act was wrong.

So insertion of the term "knowingly" would not have the effect of exculpating any violator for lack of knowledge that the act he committed was unlawful.

Mr. PEYSER. I withdraw my objection.

Mr. BOR. Mr. Peyser, there is another thing that should be brought to your attention and that is there are provisions for civil penalties separate and distinct from the criminal provisions. Under the provisions for civil penalties the Secretary has authority to impose a penalty of not exceeding \$1,000 for each violation. In which case, it is unnecessary to establish that the violation was a knowing violation.

We have included the term "knowingly" as an ingredient in the criminal offense, not in the civil offense, so that, if someone has violated the act, without an intent to do so, he would be a violator subject to civil penalties.

The CHAIRMAN. Is there any further discussion regarding the proposed technical amendments?

Without objection, they will be considered en bloc.

All those in favor of the technical amendments, signify by saying "aye" and those opposed, "no."

The technical amendments are adopted.

The gentleman from Texas is recognized.

Mr. POAGE. Mr. Chairman, the Animal Welfare Act was first enacted in 1966 to prevent the theft and the sale or use in research and laboratories of pet cats and dogs, and also to promote the humane treatment by dealers and research facilities of cats, dogs, and certain other laboratory animals.

In 1970, the act's coverage was extended to most warmblooded animals. Exhibitors and auction sales were subjected to the regulation, and the Secretary's powers were increased and extended to cover activities, which burden, obtained, or substantially affect interstate commerce.

H.R. 5808, which was introduced by our chairman, Mr. Foley, addresses two problems not reached by the present law. The first is the mistreatment of animals in the course of their transportation, particularly in air transportation. The second is animal fighting ventures, what we generally speak of as dogfights.

All carriers of animals, and persons handling such animals in connection with their transportation, would be required, under this bill, to adhere to humane standards established pursuant to the bill under pain of both civil and criminal procedures.

Also, the bill would make it a crime to promote and sponsor or abet animal fighting ventures. Several other clarifying and strengthening amendments were made to the present law.

S. 1941, supported to and passed by the Senate on December 18, 1975, which was a day before adjournment, would also bring transportation of animals under regulations, but it differs from H.R. 5808

in a number of important particulars which urged us in our detailed comparison between the two bills.

The Senate bill does not deal with animal fighting ventures or dog fights.

I do not know, Mr. Chairman, how far we want to discuss this. Probably we will save time and direct our attention to the things the members are most interested in by simply letting us move into the sections of the bill. Anyone who has a question to any particular section, to register or offer amendments to it.

Mr. THONE. I do not have any amendments, Mr. Chairman, but, if the gentleman from Texas would yield—as you indicate, we are getting into the animal fighting business, the so-called dog fights you mentioned, Mr. Poage. Frankly, this concerns me just a little.

I notice where the attorney general, or the assistant attorney general, Mr. Uhlmann, objected to this section of the bill saying that traditionally in our form of government the responsibility for the maintenance of law and order has been lodged with State and local authorities. Federal jurisdiction has been, for the most part, restricted to matters directly involving a function of the Federal Government or otherwise beyond the normal enforcement capability of such State or local authorities. Mr. Uhlmann goes on with additional comments regarding his objections to this section.

Dick Feltner, the Assistant Secretary of Agriculture also says, concerning the animal fighting provisions of H.R. 5808:

The department strongly opposes the holding of such events. However, we do not have the kind of trained manpower and other resources necessary to prohibit animal fights or arrest the involved persons.

In our view, this is a proper responsibility of state and local law enforcement agencies, and, with few exceptions, laws exist at that level which would permit effective dealing with this problem.

Now, I guess my questions of the Livestock and Grains Subcommittee chairman are these. Do you feel that the problem is of such gravity that we have to involve the Federal Government in this area where historically we have reserved it to the State and local governments?

Mr. POAGE. When you ask me about my own feelings, I did not include it in the bill—I introduced the bill some years ago.

Mr. THONE. It is my understanding that this section is not included in the Senate bill.

Mr. POAGE. It is included in the bill that Chairman Foley introduced and that the majority of the subcommittee did vote to approve, by prohibition of dogfighting or not of animal fighting ventures, but of moving animals in interstate commerce for the purpose of engaging in these dog fights.

I would certainly agree readily with the gentleman that we have no jurisdiction, no power, to prohibit dogfights in Waco, Tex., if they are local doges and there is no movement in interstate commerce. But I do think we have the power to keep someone from shipping the dogs from Waco to Trenton, N.J., to engage in a dogfight.

That is really what we do in this bill. On page 9, I think you will find that we do not describe dogfighting per se; we make it an offense to move animals in interstate commerce for the purpose of engaging in actions which are in violation of the law in almost every State. The

State of Texas has a law against dogfighting. I grant you that it still goes on. We do not have enough local constables and sheriffs to stop it, and I agree with the Department of Agriculture that they do not have enough probably to stop it. But one of the places that you can greatly cut down on some thing that most of us think is undesirable is to catch the big fish who are shipping dogs across State lines. They are the ones who are really putting the big money into it.

Mr. THONE. I would agree, but section A of section 26 on line 9 that you cited to me says that it shall be unlawful for any person to knowingly sponsor or exhibit any animal in any animal fighting venture, et cetera. Then you get into this area——

Mr. POAGE. Any animal which was moved in interstate or foreign commerce.

Mr. THONE. I agree, 100 percent. But won't the Federal official, then, have to monitor the local fighting events? I agree with you that part of the evidence would be whether or not those participating animals had been shipped in foreign or interstate commerce.

The CHAIRMAN. At an earlier time when hearings were held on this subject, the committee received evidence and testimony indicating that certain conventions or meetings of fighting animals, particularly fighting dogs, were held in various parts of the country. This activity was not centered in any one section, but existed in a variety of States across the continental United States. These ventures, it is known, attracted animals and animal handlers who were moving the animals in interstate commerce.

The act as proposed here would not, of course, deal with a situation in which animals were not moved in interstate commerce and were involved in fighting purely within the boundaries of the State, as Mr. Poage has said. Most often, however, that is not the case. Animals are transported in interstate commerce in order to participate in many of these so-called fighting conventions. Furthermore, the mails have been used for interstate advertising involving the sale of fighting dogs and the promotion of various animal fighting exhibitions.

There has been testimony that substantial wagering is involved. In some States penalties for dogfighting are contained in statutes regarding general cruelty to animals. In many cases, animal fighting is regarded as a misdemeanor carrying only a minor fine while the sums involved in the wagering alone in the more professional fights far exceed the potential sanctions of these penalties. In fact, we have received evidence that courts and magistrates have complained publicly that those convicted of these various misdemeanors are not subject to fines which the court or magistrate think sufficient to discourage such conduct. Fines generally are \$100, \$200, or \$300 at the most.

The dogs themselves are much more valuable than that and the wagering is much higher.

I think those who have had an opportunity to view any of the films that have been taken by animal welfare agents investigating dogfighting, would find it to be one of the most vicious barbaric, and inhumane spectacles anyone could witness. We had color films here of two dogs that were fought to the death in Flordia. These animals were kept fighting until one of them was killed by the other.

I find it very difficult to say anything even remotely sympathetic to the attitudes and motivations of people who would do that.

Animal fighting has probably existed as a sport or diversion as long as man had inhabited the Earth, and it will no doubt continue. I do not contend that this legislation will blot it out entirely, but it will place the strong moral suasion of Federal law against it. In addition, it would provide an opportunity for Federal-State cooperation in the gathering of intelligence concerning the movement of animals for the purpose of fighting since the Federal Government would have jurisdiction over both the mails and interstate commerce.

Mr. THONE. As Dick Feltner said, I think all of us oppose the holding of these events. I think that ought to be underscored. There is no question about that.

Let me, however, again cite to the chairman that the Attorney General's office states in their correspondence on the bill, and I quote:

There appears to be no sound basis for the view that Federal intervention in this area could more effectively handle such investigations or have a more deterrent effect in preventing the type of offenses contained in H.R. 5808.

Mr. POAGE. There is a \$5,000 fine in this, and that is not true in most localities. That certainly is going to have a deterrent effect.

Mr. THONE. Unless you have effective local law enforcement, which we do in our State. We have a State law.

My next question would be, How would either one of you chairmen envision how this would be enforced by the USDA?

The CHAIRMAN. There are two main and interrelated activities involved in the prevention of dogfighting, the gathering of intelligence and actual law enforcement.

These conventions or meetings are usually held in some secrecy. Previous testimony indicated that they were often held on and at unusual hours in order to avoid detection.

I think that the USDA and other Federal agencies could perform a very important service by cooperating with local law enforcement officials in the development of information about the movement of animals and the possible conventions or meetings for dogfighting.

Where a direct violation of the law has occurred, the Department could certainly seek action on the part of the local U.S. attorney.

I understand that the U.S. Justice Department is not enthusiastic about the prospect of passing this act. For my own part, I find it very difficult to accept their notion that the Federal Government could contribute nothing to deterring this type of conduct. To my knowledge, there are very few, if any, State laws stringent enough to discourage this kind of activity or to involve the resources of the United States in the detection and prosecution of such offenses.

Mr. THONE. Lastly, there is this, Mr. Chairman. I will again quote Mr. Feltner in his correspondence. He says:

We do not have the kind of trained manpower and other resources necessary to prohibit animal fights or arrest the involved persons.

So I assume that that would somehow have to be taken care of.

Mr. POAGE. I feel they would have just as much there as they have in regard to gambling, an offense in a great many of our States. Gambling is a violation of local laws in many of our States. Many States prohibit gambling on horse races. Other States authorize it. Some States legalize lotteries; other States make it an offense.

The Federal Government protects those States, or at least extends protection to those States where it is against the law. It is against the law to use interstate facilities.

Mr. THONE. Isn't dogfighting a type of gambling?

Mr. POAGE. There is gambling in connection with it, as a matter of fact, with these dogfights, and we know that.

Mr. THONE. My argument to the chairman, then, would be that we are already covered here.

Mr. POAGE. We are not covered as far as the fighting is concerned. We are covered as far as the gambling is concerned. The Federal Government today does give a great deal of actual protection to States that prohibit gambling. That is, they go a long way toward discouraging gambling.

The CHAIRMAN. The Federal Government has authority with respect to the interstate movement of paraphernalia used in gambling.

Mr. POAGE. Yes. You try to bring paraphernalia in—try to bring tables into Texas—

Mr. THONE. Or dogs?

Mr. POAGE. There is no prohibition against bringing the dogs in.

Mr. THONE. Even if they are going to be used for gambling?

Mr. POAGE. I guess if you can establish that they are going to be used for gambling. But a roulette table can't be used for anything else but gambling. The dogs could. It is a good deal harder to prove that the dogs were being brought in for gambling purposes than it would to prove that the roulette table was being brought in for that purpose.

Now for the Department of Justice to try to block this on the basis that they are not equipped to do anything, it seems to me they might as well say they cannot enforce any gambling laws or any of the rest of these various laws that we pass to strengthen the hands of the local officials, and that is what it does.

The CHAIRMAN. Though my own rather limited experience has been in the area of criminal prosecution for State offenses, it has been my observation that there is cooperation between Federal authorities and local authorities. Federal authorities and investigators often inform State law enforcement and prosecuting officials of information they have obtained as a result of their investigations, pertaining to certain offenses that are against both the United States and against the State.

There are many examples of such crimes including interstate movement of stolen motor vehicles, interstate movement of persons for immoral purposes, interstate movement of gambling paraphernalia and devices, and so on.

Mr. MATHIS. As I recall, we were advised in full committee at some previous time that in some areas local law enforcement officials were even engaged in assisting local dogfights, in some instances even to directing traffic to get to these particular fights.

I have probably been as vocal in the defense of States' rights as anyone, but I think this kind of law is a threat and would be a deterrent.

I think we ought to pass this bill as it is and forthwith.

Mr. THONE. Down in your area of the country, I hear occasionally of cockfights. That is not included in this bill. Do you think that would be advisable?

Mr. MATHIS. I am not sure they are not incorporated. If they are not, they certainly should be.

Mr. THONE. They are not covered.

Mr. MATHIS. I would be willing to support an amendment—in fact, to offer such an amendment at the proper time.

Mr. SEBELIUS. Don't endanger the bill with your chickens.

We did discuss the cockfighting issue. If I remember correctly it was mainly on the basis that we were dealing with warm-blood animals. We didn't want to proliferate this thing or go beyond the scope. We just wanted to get a sound piece of legislation.

The thing I want to bring out, and the chairman of the full committee did touch on it, we have not emphasized it, however, is that we have in (c) of section 26 a third violation that reads:

It shall be unlawful for any person to knowingly use the mail service of the U.S. Postal Service or any interstate instrumentality for purposes of promoting (it).

That is the real handle we have. The third and the other two make this thing a much more effective section.

I personally and philosophically hate to insert the Federal Government. From what I heard and listened to and saw, I think that between the three items there we have a tool to branch out with and try to do some good.

Mr. MATHIS. One of the other members of this committee suggested it might be an antibusing bill for dogs.

The CHAIRMAN. If that helps any members to support it, I hope they will nourish that thought.

Mr. SYMMS. I want to direct one question to Mr. Poage.

Did the Department bring over any information as to how many people they would have to hire for administration of section 26 in the bill?

Mr. POAGE. No; they did not tell us how many people. They did not even say that they would try to administer it, and I do not know whether there is anything in this that puts the administration of the dogfight part on the Department of Agriculture.

Now, it is true that the general part of the bill is administered by the Department of Agriculture. But this dogfighting part is up to the district attorney, as I see it.

Mr. SYMMS. I notice line 16 of page 10, (c) indicates that "Necessary care including veterinary treatment shall be provided while the animals are so held in custody."

In dogfighting, who is going to take care of that problem and pay for it?

The CHAIRMAN. I suppose it would depend, at that point, on which law enforcement agency had custody of the animal.

Mr. POAGE. This is referring to the U.S. Marshal or other authorized person holding it pending disposal thereof by the court in accordance with this paragraph, and, I think, care of the prison.

The CHAIRMAN. I do not really think that is going to be a major expense to the United States.

Mr. KREBS. In line with the comments of the gentleman from Kansas, it had been my intention to offer an amendment to page 11, lines 24 and 25 to add the term or any live bird to the definition of animal.

Mr. POAGE. What you can do there is to change that definition of animals where it says mammals. The only question there is whether

you think you will get more good out of it in order to pass it. Whether you pass it all or whether you pass nothing.

The CHAIRMAN. It is always difficult to completely rationalize the actions of any legislative body, and I cannot think of a very good reason why a prohibition against animal fighting should not extend to birds. To be frank, however, I think that if we were to extend the coverage provided by the bill, we would run into both political and legislative problems arising from the fact that in some areas of the United States bird fighting is a cultural tradition, no matter how some of us may view it.

I do not personally feel that animal fighting, as prescribed by this bill, reflects extensive involvement of any segment of the population of the United States. It is, rather, a sporadic, totally atypical activity involving small groups of individuals in a so-called sport, which I feel they engage in primarily for purposes of gambling and other wagering activity.

Once we cross the threshold into bird fighting, however, we have the problem that in certain sections of the United States, this is a cultural inheritance. Again, whether one questions it, objects to it, or justifies it, it still occurs; and to irradicate it would involve a very major law enforcement effort. I just wonder whether it would not be wiser to take one step at a time.

At this juncture, I would prefer to see us take action to discourage and eliminate the animal fighting which does not raise these other problems.

Mr. ENGLISH. It has been some time since we had those hearings, but at that time we discussed this issue. I believe there are some territories in the United States where there is no State law against fowl fighting.

We have discussed intrastate mailing; some States forbid this and some States allow it. In various States you get into cultural and traditional differences. I don't believe, however, that there is any area in which dogfighting is allowed.

The CHAIRMAN. I do not think there is any area in which dogfighting is not either specifically and expressly prohibited or at least included within more general cruelty statutes. While some of those are not specifically directed against fighting, others are. Yet it is my impression that all States prohibit animal fighting under one type of statute or another; that is, under cruelty to animals statutes or under a specific antifighting statute.

Mr. KREBS. I am in sympathy with the bill, Mr. Chairman. I do not in any way want to scuttle it, but I think, as you correctly pointed out, the difference cannot really be rationalized on any ethnic custom basis. It is just as cruel in the case of one type of animal as it is in another.

But, in order to make some progress on this type of legislation, I will not offer my amendment.

Mr. MELCHER. I do not know whether Mr. Krebs is offering his amendment or not.

Mr. KREBS. I am not, in line with the political advice given by the chairman.

Mr. MELCHER. I merely want to state, if I understand the bill correctly, it would not interfere with the cultural activities—if that is what it is—within any State. Do I understand that this would deal only with the mails?

The CHAIRMAN. It would deal with use of the mail and transportation.

Mr. MELCHER. I am sorry the gentleman did not offer his amendment. I would have no reason not to vote to limit the so-called cultural sport in those areas and States that want it. Certainly it should be prohibited from being transported outside such States.

Mr. POAGE. Mr. Chairman, we passed a Federal law a long-time ago against bullfights. It is just as much a cultural activity as any of the rest of these fights are.

We have no problem about enforcing it.

I have been reared in an area where you might say the culture might approve bullfighting, but I never heard of a bullfight taking place in my lifetime in the State of Texas.

You can stop some of these things. It can be done. But if you try to do everything at one time, you find you do not achieve any of it. What we are trying to do here is to stop the most flagrant practices and hope that we will be successful in it. Whereas, if we tried to stop it all, we probably would not have very much success.

This thing moves in steps. I introduced the first humane slaughter bill about 20 years ago, and this committee passed it. Then I introduced the animal bill in 1966, and this committee passed it. We have been taking it by steps, and this bill goes a little further.

I do not think you could make everybody accept every humane practice at this time, but I think that you can take it in steps. The question is, I am sure, how far can you take it? I frankly doubt if there is a possibility of taking it as far as the bill undertakes to, not that I object to what the bill does.

Mr. KREBS. Would you tell the full committee where this opposition is coming from to any inclusion of birds in this piece of legislation?

Mr. POAGE. The southern part of the country, probably, and probably some from southern California, and particularly Puerto Rico, of course. I suppose you are having some of it down in Florida where you have a substantial Cuban population.

Mr. SEBELIUS. The whole bill is the Animal Welfare Act. Birds aren't animals, and I hope that, even though we all oppose cockfighting as a promotion, we would not add this extra thing. It is like grabbing for one more thing and giving problems to the bill. I think that is the feeling to the author here. We would have to make a lot of amendments if you are going to technically include birds in an animal welfare act.

Mr. SYMMS. I am still concerned about this problem of how many people it is going to take. On line 22 of page 9, it says—

The Secretary

and I assume that means the Secretary of Agriculture—

or any other person authorized by him shall make such investigations as the Secretary deems necessary to determine whether any person has violated or is violating any provision of this section . . .

I am not an attorney, but I assume that means you have got to go out to a dogfight to find out whether the dogs were shipped across State lines.

Mr. POAGE. That does nothing except to give the Secretary a little authority, if he wants to exercise it. It says such as the Secretary may determine is necessary, and, if the Secretary does not determine that that thing is necessary, that no law has been violated, the Secretary does not have to determine that anything is necessary to be done. Any subsequent Secretary can go just as far as he wants to go.

So I do not see that it imposes a thing on the Secretary. It does give the Secretary some power, if he wants to exercise it. But as far as burdening the Secretary by having to take over and do a lot of things he does not want to do, it does not require him to do anything.

Mr. SYMONS. I guess my problem with this section is basically that we know we are going to have to hire a certain amount of people to work with the Department of Agriculture or some department.

Mr. POAGE. No, we know we are going to; we do not know that we have to.

Mr. SYMONS. To enforce—

The CHAIRMAN. I direct the gentleman's attention to page 10 of the bill which says that the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations under cooperative agreements with such agencies.

I think the chairman of the subcommittee has correctly defined the legal requirements of the act. The Secretary is empowered but not required to provide such resources as he finds necessary.

Mr. POAGE. I want to ask the gentleman from Idaho how much it is costing the Secretary to enforce the bullfighting law?

You have got facts and figures. That is not speculative. That is the present. How much money did the United States spend last year to enforce the bullfighting law? It is very similar to this.

Mr. SYMONS. It is a good question. Maybe nothing. I do not know.

Mr. POAGE. I don't think they did.

Mr. SYMONS. I am not downplaying the problem of dogfights, but there are other things going on like people placing bombs in La Guardia Airport and the disappearance of an official.

In my State low salaries are one of the major problems we have in keeping good people in local law enforcement where the action is.

One of the reasons we always run into is that the Federal Government seems to be taking all the funds so there is nothing left to pay local sheriffs.

It looks to me like we are heading in the direction of more federalization of law enforcement—or a higher elitism, if you will—with respect to law enforcement. It seems to be involving the Federal Government in something which should be a local responsibility.

Maybe it will not cost that much. However, we are getting the Federal Government involved in dogfighting. I do not think anyone argues that. I don't think any Secretary of Agriculture is going to want it.

The question of what to do with dogs that are fighting brings you into the matter of veterinarians and all.

I would be happy if this section were out of it.

Is there any law against bullfighting?

Mr. POAGE. Let me explain that; as far as I know there is no Federal law against bullfighting per se. That is, if you grow the bulls in Idaho and fight them in Idaho, do not advertise them across State lines, I think you can conduct a bullfight unless Idaho has got a law against it. But you cannot advertise it across the State line and you cannot move the bulls across the State line to engage in the fight.

The Federal Government has not gone so far as to say just how you can handle things in Idaho, but it is hard to conduct it without getting something across the State lines.

Mr. SYMMS. It is hard enough, sometimes, to get letters across the State line.

Mr. MURRAY. As far as we know, there is not any Federal bullfighting law which prohibits the combat between two bulls. It would strike me that this is the bullfight bill, because this not only applies to dogs but it applies to mammals of which bulls are bovine mammals. This bill would prevent fights between bulls in interstate commerce and have the Secretary supervise interstate bullfights along with interstate dogfights.

Mr. BOR. I do not think this bill is involved in the question of bullfighting because an animal fighting venture is defined as a fight between two animals. An animal is defined as excluding man. The traditional type of bullfight where you have a bull and a man in an arena would, as I see it, not be covered by this bill.

Mr. MURRAY. If you look at the language at the bottom of page 11 it is between animals or between men. The words "except man" were put in by the last Congress because of the concern that we would ban prizefighting where two men, being mammals, were in a ring fighting against each other. Not where a man was fighting an animal, but where two men were fighting each other.

Mr. BOR. Staff did discuss the possibility of a picador's courses, though.

The CHAIRMAN. Does counsel have a uniform opinion as to whether the act would bar the fighting of an animal and a man, in the generic sense of the term man.

Mr. MURRAY. I guess it is available for construction.

Mr. BOR. I think we agreed to disagree on this issue.

On page 11, the term "animal fighting venture" is defined as meaning a fight between at least two animals. At the bottom of the page, the term "animals" is defined to mean any live dog or mammal, except man. It would appear that an animal fighting venture would not include a fight between an animal and man but rather between two animals each of which is not a man.

Mr. THONE. Counsel, would you tell me whether or not this was thoroughly reviewed on the Senate side, and why they excluded animal fighting ventures over there?

Mr. IMHOFF. I think the question was probably considered a separate issue. Animal fighting is apparently not within the jurisdiction of the Senate Committee on Commerce. I believe Mr. Weicker felt that they should treat it separately and that it be made the subject of separate hearings.

I am not sure as to the reason for that. I believe there is a representative from Mr. Weicker's office here this morning who might be able to respond directly to the question.

Mr. Weicker recognized it as a problem, but he felt that probably he did not have a sufficient record at the time to address it in his bill. That is my understanding.

Mr. BALDUS. Mr. Chairman, is this Senate report close enough to the House bill so that it may be used as a guide to answer some of the questions?

The CHAIRMAN. No, it is not. The Senate bill is substantially different from the House bill as reported by the House subcommittee and is, therefore, not a good guide.

Mr. THONE. To bring this to a head, in that I guess I started all this. I would move that section 15 of the bill be deleted. Am I correct, Mr. Chairman? Do I have the right section?

The CHAIRMAN. It is section 15 of the bill, section 26 of the law, page 8, line 24. That is where the "animal fighting ventures" language starts.

Mr. MURRAY. It terminates on line 10 of page 12.

The CHAIRMAN. The gentleman from Nebraska has moved to strike section 15 of the bill.

Is there any discussion on this dogfighting section?

Mr. PEYSER. I am totally opposed, frankly, to the dogfighting that goes on anywhere in this country, but we have not discussed the transportation issue at all.

I am looking at these reports from the Post Office, the Agriculture Department, the CAB, the FAA. Everybody is concerned about the problem of transportation. How are they going to handle this situation? We haven't really discussed that.

The CHAIRMAN. Is there any further discussion?

If not, all those in favor of the amendment of the gentleman from Nebraska, Mr. Thone, will, when their names are called, respond aye. All opposed, no.

The clerk will call the role.

The rollcall vote follows:

Ayes: Representatives Thone and Symms.

Nays: Representatives Poage, Jones of North Carolina, Melcher, Mathis, Bergland, Richmond, Nolan, Baldus, Krebs, Harkin (by proxy), Bedell, McHugh, English, Fithian (by proxy), Thornton, Wampler, Sebelius, Heckler, Grassley, Moore, Foley, de la Garza, Litton, Kelly (by proxy).

The CHAIRMAN. The clerk will report the result of the rollcall.

The CLERK. Two ayes. Twenty-four nays.

The CHAIRMAN. Two ayes and twenty-four nays.

The clerk will report the number of votes cast by proxy.

The CLERK. Three were cast by proxy.

The CHAIRMAN. There being 2 ayes, 24 nays, and 3 by proxy, the amendment is not agreed to, and a quorum is present.

At this time the Chair would suggest that the committee recess. It is the intention of the Chair to set aside tomorrow at 10 a.m. for further consideration of the pending legislation.

The Committee on Agriculture will stand recessed, to meet tomorrow at 10 a.m.

[Whereupon, the meeting was recessed at 12 noon.]

ANIMAL WELFARE ACT AMENDMENTS OF 1976

THURSDAY, JANUARY 22, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:13 a.m. pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, Jones of North Carolina, Jones of Tennessee, Bergland, Rose, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Bedell, McHugh, Fithian, Jenrette, D'Amours, Thornton, Wampler, Sebelius, Thone, Symms, Grassley, Hagedorn, and Moore.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof, and John E. Hogan, associate counsels; Nick Ashmore, staff assistant; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN: The Committee on Agriculture will come to order.

The gentleman from Nebraska makes a point of order that a quorum is not present.

The Clerk will call the roll.

Responding to the rollcall were Representatives Poage, Bergland, Rose, Richmond, Weaver, Krebs, Bedell, McHugh, Fithian, Wampler, Sebelius, Thone, Symms, Moore, Foley, Jones of Tennessee, Breckinridge, Baldus, Hagedorn, Jenrette, D'Amours, and Nolan.

The CHAIRMAN: Without objection, while the Clerk is computing the results of the quorum call, the committee will proceed to consider the legislation before it.

Are there any amendments to the bill H.R. 5808?

Mr. KREBS. Mr. Chairman, am I recognized for the purpose of an amendment?

The CHAIRMAN. The gentleman from California is recognized.

Mr. KREBS. You may recall my withdrawal of a proposed amendment yesterday in the interest of possibly expediting the passage of this bill.

However, I have since found out that, if I did not offer the amendment, somebody else would, either here or on the floor. So I felt we might as well get this issue before this committee.

With that in mind, Mr. Chairman. I will offer an amendment which relates to page 11, lines 24 and 25, where it defines the term "animal," and ask that the words "or any live bird" be added to it.

As I briefly indicated yesterday, and I think other members of the committee also indicated yesterday, the subject of cockfights is one that is outlawed in, I think, a vast majority of the States. There are apparently a couple of States in which this practice is not outlawed.

I happen to feel that it is just as cruel and barbaric as dogfighting, and I am directly familiar with neither. I see no reason or rationale behind prohibiting the transportation of dogs and other animals for purposes of fights, and not outlawing or prohibiting the transportation of live birds for the same purpose.

It is with this in mind that I offer this amendment.

Mr. BALDUS. In a friendly spirit, I think I would vote for the amendment.

In a friendly spirit, I would like to inquire about its germaneness. Since the purpose of the bill is the humane treatment of some animals, and perhaps that would be a question of the Chair and the counsel as to what would likely be—I am not sure what the procedure is here—

The CHAIRMAN. In a similar friendly spirit, I would have to advise the gentleman that, although I would like to find that the amendment is not germane to the bill, I do not think my parliamentary powers extend that far, and I would have to rule that the amendment is germane. It is possible that the title needs adjustment.

We can inquire of counsel for their judgment in the matter.

A parliamentary inquiry has been broached as to whether or not the amendment is germane to the bill.

Mr. MURRAY. For what it is worth, the animal welfare statute does include a certain class of birds. The definition of animal in the statute is broad enough to include chickens and other birds.

The CHAIRMAN. The Chair interrupts to inform the committee that 22 members responded when their names were called. A quorum is present.

Mr. POAGE. Mr. Chairman, while counsel is checking, I will point out the practice. I think that is what is involved here.

I think most all of the members theoretically would like to include birds. I don't know of anyone here in this committee who would condone cockfights.

I would like to get some of the things that this bill gives us. Frankly this bill goes a little further than I thought was advisable merely from the standpoint of getting something passed. This bill reaches a long way. I do not know if we can grasp that far. I think that this amendment is going to jeopardize a substantial body of reform that all of us are for, by trying to grasp too much.

I would rather take a part of something than to get all of nothing. I think that is our choice here. It is that we can make a very substantial step if we will pass this bill.

On the other hand, if we try to include everything, if we make it a Federal offense to step on an ant—which undoubtedly occasions great pain to that ant—if we go to those extremes, we are not going to get anything. And we are going to leave the dogfighting and we are going to leave the transportation all in the same mess it is in today.

Let's try to make a step. Let's try to do something. We have a bill here. It doesn't prevent all cruelty. There is not one of you that is going to live long enough for the Federal Government to prevent all

cruelty to animals. But we are making a big step and we are going to protect a lot of animals if we can pass this bill. And I think we can pass this bill.

But if you load it down with those things that people do not like to vote against but know that it isn't going to pass, you just jeopardize any type of progress whatever. It seems to me that, regardless of the technical rulings on it, we are faced with a purely factual proposition.

The CHAIRMAN. I want to concur with everything that the subcommittee chairman has said. I hope the members will be persuaded to accept a somewhat less than perfect standard set forth in this bill in the interests of achieving what the chairman indicates is a substantial step forward in the interests of animal protection. Is there any further discussion?

Mr. SYMMS. We have already decided here that we are going to have a czar of dogfighting in the Federal Government. Maybe the same czar could take care of the chicken fighting.

I know a lot of people who have chickens—Easter chickens for the children. Maybe the humane question is the same. I think we ought to include the chicken fighting in the bill. I think Mr. Krebs ought to be commended for the amendment.

Mr. KREBS. Having given this matter some further thought, it would appear that, regardless of which side of the issue we are on—and I tend to agree with the gentleman from Texas that we are probably all on the same side. We cannot escape this issue by reaching a decision here one way or another in this committee because the issues will be brought up on the floor again. I think we might as well face the reality that, if someone on the floor feels this bill is to encumbering and wants to knock out the birds, he certainly can do so.

Mr. SEBELIUS. I sat through the hearings with Chairman Poage and I would like to associate myself with his remarks and your remarks in an attitude that—let us get what we can get this time.

Mr. BALDUS. On the question I raised earlier, can we get an opinion from counsel?

Mr. MURRAY. It is a close question. I do not know whether it is germane or not. A thread can be established that it is germane on the grounds that the statute says that the term "animal"—that is, enumerated ones, dogs, cats, monkeys, and so forth—includes any other warm-blooded animal designated by the Secretary. Birds are warm-blooded animals. They are not mammals, but they are warm-blooded animals. By regulation, apparently the Department excludes birds from the designated list. They say birds are not included.

So the way the statute sits, I think a germane argument could be sustained, and in the rule of germaneness it sometimes gets pretty fuzzy as to what is or isn't germane.

The thrust of the bill is to provide humane care for laboratory animals in zoos, and pets, and animals of that nature. So I would come out on the side that it is germane. That is an opinion. Maybe my peers have a different idea?

Mr. BOR. We agree it is germane.

Mr. BALDUS. I find the arguments of the chairman of the subcommittee persuasive, even though I would prefer to vote for the amendment, to preserve the bill.

The CHAIRMAN. In regard to the question of germaneness, the Chair feels that the will of the committee should be allowed the widest possible latitude when deciding whether or not something is germane. The Chair, therefore, would overrule such a point of order if it were made.

The question occurs on the amendment of the gentleman from California, Mr. Krebs, adding the words "or any live bird."

All those in favor of the amendment, say aye and those opposed, no.

Mr. SYMMS. I would like a rollcall.

The CHAIRMAN. A rollcall is demanded.

Those members who support the amendment will answer aye when their names are called. Those opposed, no. The clerk will call the roll.

The rollcall follows:

Ayes: Representatives Nolan, Weaver, Krebs, Bedell (by proxy), Jenrette, D'Amours (by proxy), Thone (by proxy), Symms, Grassley, Hagedorn, Moore, Kelly (by proxy).

Nays: Representatives Poage, Jones of North Carolina, Jones of Tennessee (by proxy), Bergland, Rose, Breckinridge, Baldus, McHugh, English (by proxy), Thornton, Wampler, Sebelius, Foley, Vigorito (by proxy), Litton (by proxy).

Mr. POAGE. Mr. Chairman, before the vote is announced, I have been told that Mr. Melcher would probably vote aye on this, and since he has not really instructed me, I will withdraw his vote.

The CHAIRMAN. Withdraw Mr. Melcher's vote.

The clerk will report the result of the rollcall.

The CLERK. Twelve ayes; fifteen nays.

Mr. KREBS. Parliamentary inquiry, Mr. Chairman. I did not hear what Mr. Melcher's vote was.

The CHAIRMAN. His negative vote was withdrawn, and he is no longer recorded.

Mr. SYMMS. I make a point of order. There is no quorum present on that vote.

The CHAIRMAN. The vote is 12 ayes and 15 nays.

The clerk will report the number of votes cast by proxy.

The CLERK. Eight votes were cast by proxy.

The CHAIRMAN. A quorum was not present on the vote.

The committee will recess until 2 p.m.

[Whereupon, the committee recessed at 10:45 a.m., to meet again at 2 p.m.]

AFTERNOON SESSION

The CHAIRMAN. The Committee on Agriculture will come to order. The clerk will call the roll.

Responding to the rollcall were Representatives Poage, Jones of North Carolina, Melcher, Bergland, Bowen, Breckinridge, Richmond, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, Jenrette, Thornton, Wampler, Findley, Symms, Jeffords, Grassley, Foley, Sebelius, D'Amours, Heckler, Hagedorn, English.

The CHAIRMAN. The clerk will report the result of the quorum call.

The CLERK. Twenty-seven members answered when their names were called.

The CHAIRMAN. How is Mr. English reported?

The CLERK. He is not reported.

The CHAIRMAN. Record him present.

The CLERK. Twenty-eight.

The CHAIRMAN. The question now reoccurs on the amendment of the gentleman from California, Mr. Krebs.

All of those in favor of his amendment, which adds the words "or any live bird" to the provision of the act preventing animal fighting, will, when their names are called, respond aye. Those opposed, no.

The clerk will call the roll.

The rollcall follows:

Ayes: Representatives Jones of North Carolina, Melcher, Mathis (by proxy), Breckinridge, Weaver, Krebs, Harkin, Bedell, English, Fithian, Jenrette, D'Amours, Thone (by proxy), Symms, Johnson (by proxy), Madigan (by proxy), Kelly (by proxy), Grassley, Hagedorn, Moore (by proxy).

Nays: Representatives Poage, Vigorito (by proxy), Bergland, Litton (by proxy), Richmond (by proxy), Baldus, Hightower, McHugh, Wampler, Sebelius, Findley, Heckler, Jeffords, Foley, Bowen, Thornton.

The CHAIRMAN. The clerk will report the result of the rollcall.

The CLERK. Twenty ayes; sixteen nays.

The CHAIRMAN. There being 20 ayes and 16 nays, the amendment is agreed to.

Are there other amendments to the bill?

Mrs. HECKLER. I have no amendment at this time, but I would like to inquire about what consideration the subcommittee gave to the issues of the use of the animals in experimental processes by Governmental agencies. I am specifically thinking about the use of beagles, and so on. What consideration did the committee give to such abuse?

The CHAIRMAN. The care and conditions of laboratory animals are not addressed in this particular piece of legislation except where they relate to transportation in interstate commerce. At an earlier time the Congress passed legislation recommended by this committee dealing specifically with the treatment of laboratory animals.

This legislation was designed primarily to focus on two areas of concern. One was the interstate transport, largely by air, of animals for use in research as well as for other purposes. Secondly, it deals with the question of animal fighting.

Mrs. HECKLER. So the committee gave no consideration to the uses that have been so well documented and reported in relationship to the use of animals, and especially dogs, by Government agencies?

Mr. POAGE. About a year or two ago, the committee passed rather comprehensive legislation on that subject. Since that subject was not a part of this bill, the hearings were not on the bill passed 2 years ago but on the bill that is before us now.

This bill, as the chairman pointed out, relates primarily to the transportation of animals and to the use of animals in fighting.

The CHAIRMAN. Has the gentlelady introduced legislation with respect to that particular subject matter?

Mrs. HECKLER. No; but I was considering preparing an amendment, Mr. Chairman. I thought that the basic law was the Animal Welfare Acts to which Mr. Poage referred earlier. These amendments did not deal with that specific subject. I wondered whether or not any consideration was given to it.

The CHAIRMAN. I think the legislation does deal with the subjects of the Animal Welfare Act and animal welfare in a broader sense. The focus, however, is largely on the handling and care of animals during the transportation process.

Mr. Bor. The act, as it now exists, has a provision directed at laboratory facilities that are maintained by Government agencies. The act now provides that any department, agency, or instrumentality of the United States, having laboratory animal facilities, shall comply with the standards promulgated, by the Secretary for research facilities. And any department, agency, or instrumentality of the United States exhibiting animals shall also comply with these standards.

These provisions are currently contained in the law. It would appear that the problem that exists is one that could be taken care of within the confines of existing law without the need for any amendments to the act.

It seems to be mainly a question of enforcement.

Mrs. HECKLER. Mr. Chairman, I do not have an amendment to prepare at this time, but I wanted to know what the committee had done. It is my understanding that these provisions are not observed and not enforced, and abuse is very extensive and has been well documented.

I certainly would consider, perhaps, writing an amendment to be considered when we vote on the floor.

The CHAIRMAN. Are there other amendments?

If not, the gentleman from Texas, Mr. Poage, moves that the bill H.R. 5808, as amended, be reported to the House with the recommendation that it do pass.

All those in favor of the motion, signify by saying aye. Those opposed will respond no.

The ayes appear to have it.

The ayes have it and the bill is reported.

The Chair will note for the record that a quorum is present.

Mr. Bor. The Senate has adopted a bill having a number S. 1941, and there is a question as to whether the bill that we would report to the floor should be an amendment in the nature of a substitute for this bill, or whether you would prefer to have that done on the floor after action is taken to adopt this.

[The bill S. 1941 follows:]

94TH CONGRESS
1ST SESSION

S. 1941

IN THE SENATE OF THE UNITED STATES

JUNE 13 (legislative day, JUNE 6), 1975

Mr. WEICKER (for himself, Mr. MAGNUSON, Mr. MATHIAS, and Mr. GRIFFIN) introduced the following bill; which was read twice and referred to the Committee on Commerce

DECEMBER 18 (legislative day, DECEMBER 15), 1975

Reported by Mr. WEICKER, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

DECEMBER 18 (legislative day, DECEMBER 15), 1975

Considered, amended, read the third time, and passed

A BILL

To increase the protection afforded animals in transit and to assure the humane treatment of animals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That this Act may be cited as the "Animal Welfare Improve-~~
4 ~~ment Act of 1975".~~

5 ~~SEC. 2. The Act of August 21, 1966, as amended (7~~
6 ~~U.S.C. 2131 et seq.) is amended by inserting before the first~~
7 ~~section thereof: "That this Act may be cited as the Animal~~
8 ~~Welfare Act".~~

9 ~~SEC. 3. Section 1 of the Animal Welfare Act, as amended~~
10 ~~(7 U.S.C. 2131) is amended by inserting after "treatment~~

1 of such animals by" and before "persons or organization" the
 2 term "common carriers or by".

3 SEC. 4. Section 2 of the Animal Welfare Act, as amended
 4 (7 U.S.C. 2132) is amended—

5 (1) by striking out subsections (c) and (d) there-
 6 of and inserting in lieu the following:

7 "(c) The term 'commerce' means trade, traffic, trans-
 8 portation, communication, or exchange—

9 "(1) between a place in a State and any place out-
 10 side of such State; or

11 "(2) which affects trade, traffic, transportation,
 12 communication, or exchange described in paragraph (1)-
 13 of this subsection.

14 "(d) The term 'State' means a State of the United
 15 States, the District of Columbia, the Commonwealth of
 16 Puerto Rico, the Virgin Islands, Guam, American Samoa, or
 17 any other territory or possession of the United States;"

18 (2) by amending subsection (c) thereof by striking
 19 out the term "affecting commerce" and inserting in lieu
 20 thereof "in commerce";

21 (3) by amending subsection (f) thereof (A) by
 22 striking out the term "affecting commerce" and inserting
 23 in lieu thereof "in commerce"; (B) by striking out
 24 "except as a common carrier,"; and (C) by striking
 25 out, "but such term excludes any pet store except such

~~store which sells any animal to a research facility, an exhibitor, or a dealer," and inserting in lieu thereof "The term does not include a hobby breeder of dogs or cats, as defined by the Secretary;"~~

~~(4) by amending subsection (g) thereof (A) by striking out "or as a pet; but such term excludes" and inserting in lieu thereof the following: "or as a pet. The term includes, solely with respect to any use in connection with a retail pet store or with a zoo, any live or dead bird. The term does not include"; and (B) by striking out "and" at the end thereof;~~

~~(5) by amending subsection (h) thereof by striking out ", which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce," and inserting in lieu thereof "in commerce"; and~~

~~(6) by adding at the end thereof the following two new subsections:-~~

~~"(i) The term 'intermediate handler' means any person who is engaged in any business in commerce which involves in whole or in part, receiving or maintaining custody of animals in connection with their transportation in commerce, except that the term does not include a dealer, a research facility, an exhibitor, a hobby breeder of dogs or cats, an operator of an auction sale, a common carrier, a person~~

1 ~~exempted from the definition of 'research facility' by regula-~~
2 ~~tion, or a person excluded from the definition of 'exhibitor';~~
3 ~~and~~

4 ~~"(j) The term 'common carrier' means the owner or~~
5 ~~operator of any airline, railroad, shipping line, or other enter-~~
6 ~~prise, which is engaged in, or authorized to engage in, the~~
7 ~~business of transporting any animals for hire or any person~~
8 ~~designated as such by the Secretary of Transportation, the~~
9 ~~Interstate Commerce Commission, the Civil Aeronautics~~
10 ~~Board, or the Federal Maritime Commission."~~

11 ~~SEC. 5. Section 3 of the Animal Welfare Act, as~~
12 ~~amended (7 U.S.C. 2133) is amended by inserting after~~
13 ~~"his facilities" and before "comply" in the first proviso~~
14 ~~thereof the following: ", including any terminal facilities~~
15 ~~used by such person,".~~

16 ~~SEC. 6. Sections 1, 11, and 12 of the Animal Welfare~~
17 ~~Act, as amended (7 U.S.C. 2131, 2141, and 2142) are~~
18 ~~amended by striking out "affecting commerce" and inserting~~
19 ~~in lieu thereof "in commerce".~~

20 ~~SEC. 7. Section 6 of the Animal Welfare Act, as~~
21 ~~amended (7 U.S.C. 2136) is amended by inserting after~~
22 ~~"research facility" and before "and every" the following:~~
23 ~~"every intermediate handler, every common carrier,".~~

24 ~~SEC. 8. Section 9 of the Animal Welfare Act, as amend-~~
25 ~~ed (7 U.S.C. 2139), is amended by inserting after "dealer,"~~

5

1 the first time the term appears, the following: "an intermedi-
2 ate handler, a common carrier", and the second time the term
3 appears, the following: "intermediate handler, common car-
4 rier,".

5 ~~SEC. 9. Section 10 of the Animal Welfare Act, as~~
6 ~~amended (7 U.S.C. 2140), is amended to read as follows:~~

7 ~~"SEC. 10. Dealers, research facilities, intermediate han-~~
8 ~~dlers, common carriers, and exhibitors shall make and~~
9 ~~retain for such reasonable period of time and on such forms~~
10 ~~as the Secretary may prescribe such records with respect to~~
11 ~~the purchase, sale, transportation, identification, receiving,~~
12 ~~handling, delivering, and previous ownership of animals as~~
13 ~~the Secretary may prescribe. Such records shall be made~~
14 ~~available by the Secretary to interested persons at all rea-~~
15 ~~sonable times, for purposes of examination and copying."~~

16 ~~SEC. 10. Section 13 of the Animal Welfare Act, as~~
17 ~~amended (7 U.S.C. 2143), is amended—~~

18 (1) by amending the title thereof to read as follows:

19 ~~"HUMANE STANDARDS FOR ANIMALS";~~

20 (2) by designating the provisions thereof as sub-
21 section "(a)" of such section by inserting "(a)" imme-
22 diately before the first sentence thereof;

23 (3) by amending the second sentence of subsection
24 (a) thereof, as designated by this section, by inserting
25 after "Such standards" and before "shall include" the

6.

1 following: "~~shall apply with respect to the facilities of~~
2 ~~any person licensed under this Act and with respect to~~
3 ~~any terminal facilities used by a common carrier subject~~
4 ~~to this Act and~~";

5 (4) ~~by adding the following new subsection at the~~
6 ~~end of subsection (a) thereof, as designated by this~~
7 ~~section:~~

8 "~~(b) The Secretary shall promulgate standards to gov-~~
9 ~~ern the transportation in commerce, and the handling, care,~~
10 ~~and treatment in connection therewith, of any animals as to~~
11 ~~which such transportation is purchased or ordered by a~~
12 ~~dealer, a research facility, an owner of a pet, an exhibitor,~~
13 ~~an operator of an auction sale, a department, agency, or~~
14 ~~instrumentality of the Federal Government or any State or~~
15 ~~local government, or any other person. Such standards shall~~
16 ~~apply to all air carriers and other common carriers and to~~
17 ~~intermediate handlers, with respect to the transportation in~~
18 ~~commerce of animals. Such standards shall include, but need~~
19 ~~not be limited to, minimum requirements with respect to~~
20 ~~containers, feed, water, rest, ventilation, temperature, air~~
21 ~~pressure, handling, veterinary care, and other factors deter-~~
22 ~~mined by the Secretary to be relevant to assuring the hu-~~
23 ~~mane treatment of animals in the course of their transporta-~~
24 ~~tion in commerce. Such standards may prohibit the trans-~~
25 ~~portation in commerce of dogs, cats, and other designated~~

~~1 animals that are less than eight weeks of age (or less than~~
~~2 such other age as the Secretary may prescribe); and they~~
~~3 may prohibit such transportation unless the animal involved~~
~~4 is accompanied by a certificate issued by a licensed veteri-~~
~~5 narian certifying that such animal as delivered to an inter-~~
~~6 mediate handler or common carrier is sound, healthy, and in~~
~~7 such condition that it can reasonably be expected to with-~~
~~8 stand the rigors of the intended transportation without~~
~~9 adverse consequence."~~

~~10 SEC. 11. Section 15 of the Animal Welfare Act, as~~
~~11 amended (7 U.S.C. 2145) is amended by adding the follow-~~
~~12 ing new subsection at the end thereof:~~

~~13 "(c) In addition to other applicable requirements, the~~
~~14 Secretary shall consult and cooperate with the Secretary~~
~~15 of Transportation with respect to the establishment and en-~~
~~16 forcement of humane standards for animals in the course of~~
~~17 their transportation in commerce and in terminal facilities~~
~~18 prior to and after such transportation. And no standard~~
~~19 with respect to transportation by air shall become effective~~
~~20 without the approval of such Secretary with respect to~~
~~21 flight safety. The Secretary of Transportation is authorized~~
~~22 and directed to take such steps as are necessary to assist the~~
~~23 Secretary in any matter relating to the transportation of~~
~~24 animals in commerce. The Interstate Commerce Commission,~~
~~25 the Civil Aeronautics Board, and the Federal Maritime~~

1 Commission, to the extent of their respective lawful author-
 2 ities, shall take such action as is appropriate to implement,
 3 enforce, or reinforce any determination by the Secretary
 4 with respect to a person subject to regulation by it, includ-
 5 ing, but not limited to, suspension of operating licenses.”.

6 SEC. 12. Section 16 (a) of the Animal Welfare Act, as
 7 amended (7 U.S.C. 2146) is amended—

8 (1) by inserting “intermediate handler, common
 9 carrier,” in the first sentence thereof after the term
 10 “exhibitor”, each time such term appears in such
 11 sentence;

12 (2) by striking out “or” before “(4)” in the third
 13 sentence thereof;

14 (3) by inserting before the period at the end of the
 15 third sentence thereof the following: “, or (5) such
 16 animal is held by an intermediate handler or by a
 17 common carrier”; and

18 (4) by adding the following new sentence at the
 19 end thereof: “It shall be the duty of United States
 20 attorneys to prosecute all criminal violations of this Act
 21 reported by the Secretary and to initiate civil actions to
 22 recover all civil penalties assessed and reported by the
 23 Secretary, or which come to their notice or knowledge
 24 by other means.”.

1 ~~SEC. 13. Section 19 of the Animal Welfare Act, as~~
2 ~~amended (7 U.S.C. 2149), is amended—~~

3 ~~(1) by inserting after "exhibitor," each time the~~
4 ~~term appears, the following: "intermediate handler,~~
5 ~~common carrier,"; and~~

6 ~~(2) by adding the following new subsection at the~~
7 ~~end thereof:~~

8 ~~"(d) Any dealer, exhibitor, intermediate handler, com-~~
9 ~~mon carrier, or operator of an auction sale subject to this~~
10 ~~Act who is determined by the Secretary, after notice and an~~
11 ~~opportunity for a hearing, to have knowingly committed an~~
12 ~~act which is in violation of a provision of this Act or of a~~
13 ~~standard prescribed pursuant to this Act, shall be liable to~~
14 ~~the United States for a civil penalty. The amount of such~~
15 ~~penalty shall be not more than \$2,000 for each violation, and~~
16 ~~if any such violation is a continuing one, each day of violation~~
17 ~~constitutes a separate offense. The amount of any such~~
18 ~~penalty shall be assessed by the Secretary by written notice.~~
19 ~~In determining the amount of such penalty, the Secretary~~
20 ~~shall take into account the nature, circumstances, extent, and~~
21 ~~gravity of the violation committed and, with respect to the~~
22 ~~person found to have committed such violation, the degree~~
23 ~~of culpability, any history of prior offenses, ability to pay,~~
24 ~~effect on ability to continue to do business, and such other~~
25 ~~matters as justice may require."~~

1 *That this Act may be cited as the "Animal Welfare Amend-*
2 *ments of 1975".*

3 *SEC. 2. Section 1 of the Act of August 24, 1966, as*
4 *amended (7 U.S.C. 2131), is amended to read as follows:*

5 "SHORT TITLE AND DECLARATION OF POLICY

6 "SECTION 1. (a) *This Act may be cited as the 'Animal*
7 *Welfare Act'.*

8 "*(b) The Congress finds that animals and activities which*
9 *are regulated under this Act are either in interstate or foreign*
10 *commerce or substantially affect such commerce or the free*
11 *flow thereof, and that regulation of animals and activities as*
12 *provided in this Act is necessary to prevent and eliminate*
13 *burdens upon such commerce and to effectively regulate such*
14 *commerce, in order—*

15 "*(1) to insure that animals intended for use in re-*
16 *search facilities or for exhibition purposes or for use as*
17 *pets are provided humane care and treatment;*

18 "*(2) to assure the humane treatment of animals*
19 *during transportation in commerce; and*

20 "*(3) to protect the owners of animals from the theft*
21 *of their animals by preventing the sale or use of animals*
22 *which have been stolen.*

23 *The Congress further finds that it is essential to regulate, as*
24 *provided in this Act, the transportation, purchase, sale,*
25 *housing, care, handling, and treatment of animals by carriers*

1 or by persons or organizations engaged in using them for
2 research or experimental purposes or for exhibition purposes
3 or holding them for sale as pets or for any such purpose or
4 use.”.

5 SEC. 3. Section 2 of such Act (7 U.S.C. 2132) is
6 amended—

7 (1) by striking out subsections (c) and (d) thereof
8 and inserting in lieu the following:

9 “(c) The term ‘commerce’ means trade, traffic, trans-
10 portation, or other commerce—

11 “(1) between a place in a State and any place
12 outside of such State; or

13 “(2) which affects trade, traffic, transportation, or
14 other commerce described in paragraph (1).

15 “(d) The term ‘State’ means a State of the United
16 States, the District of Columbia, the Commonwealth of Puerto
17 Rico, the Virgin Islands, Guam, American Samoa, or any
18 other territory or possession of the United States.”.

19 (2) by striking out the term “affecting commerce”
20 in subsections (e) and (f) and inserting in lieu thereof
21 “in commerce”; (3) by amending subsection (g) thereof
22 to read as follows:

23 “(g) The term ‘animal’ means any dog, cat, monkey,
24 guinea pig, hamster, rabbit, bird, horse, or any other animal,
25 which the Secretary determines is intended for use for re-

1 *search, testing, experimentation, or exhibition purposes, or*
2 *which is used or intended for use as a pet. With respect to a*
3 *dog, the term also includes a dog used for hunting, security,*
4 *or breeding purposes. The term does not include farm*
5 *animals, such as, but not limited to, livestock or poultry, used*
6 *or intended for use as food of fiber, or livestock or poultry*
7 *used or intended for use for improving animal nutrition,*
8 *breeding, management, or production efficiency.”.*

9 (3) *by amending subsection (f) thereof by insert-*
10 *ing after “or sells” and before “any” the following:*
11 *“, or offers for sale.”,*

12 (4) *by further amending subsection (f) by insert-*
13 *ing a semicolon after the word “pets” and by striking*
14 *“, but such term excludes any retail pet store except such*
15 *store which sells any animals to a research facility, an*
16 *exhibitor, or a dealer,”;*

17 (5) *by amending subsection (h) thereof by strik-*
18 *ing out “, which were purchased in commerce or the*
19 *intended distribution of which affects commerce, or will*
20 *affect commerce,” and inserting in lieu thereof “in com-*
21 *merce”;* and

22 (6) *adding at the end thereof the following new*
23 *subsection:*

24 “(i) *The term ‘carrier’ means any person subject to*
25 *regulation by the Interstate Commerce Commission, the Civil*

1 *Aeronautics Board, or the Federal Maritime Commission,*
2 *or any other person or class of persons engaged in the busi-*
3 *ness of transporting animals for hire or providing services*
4 *incidental to such transportation, as designated by the Secre-*
5 *tary of Transportation.”.*

6 *SEC. 4. Section 3 of such Act (7 U.S.C. 2133) is*
7 *amended by inserting after “his facilities” and before “com-*
8 *ply” in the first proviso thereof the following: “, including*
9 *any terminal facilities used by such person,”.*

10 *SEC. 5. Sections 4, 11, and 12 of such Act (7 U.S.C.*
11 *2134, 2141, and 2142) are amended by striking out “affect-*
12 *ing commerce” and inserting in lieu thereof “in commerce”.*

13 *SEC. 6. Section 6 of such Act (7 U.S.C. 136) is*
14 *amended by striking out “Every research facility and every”*
15 *and inserting in lieu thereof “Every research facility, car-*
16 *rier, and”.*

17 *SEC. 7. Section 9 of such Act (7 U.S.C. 2139), is*
18 *amended by inserting after “dealer,” the first time it appears*
19 *the term “a carrier,”, and the second time it appears the*
20 *term “carrier”.*

21 *SEC. 8. Section 10 of such Act (7 U.S.C. 2140) is*
22 *amended by deleting “upon forms supplied by the Secretary”*
23 *in the first sentence thereof and by adding after the second*
24 *sentence thereof the following two new sentences: “Carriers*
25 *shall keep such records as are necessary to carry out this Act,*

1 with respect to the transportation, receiving, handling, and
2 delivering of animals, as the Secretary may prescribe: Pro-
3 vided, That in the case of those carriers required to maintain
4 records under requirements of other Federal agencies, if the
5 Secretary determines that any additional records are needed
6 for the purposes of this Act, and proposes to require such
7 records, such requirements shall not become effective until they
8 have been approved by such other agencies. Any such records
9 shall be made available at all reasonable times for inspection
10 and copying by the Secretary.”.

11 SEC. 9. Section 13 of such Act (7 U.S.C. 2143), is
12 amended—

13 (1) by amending the title thereof to read as follows:

14 “HUMANE STANDARDS FOR ANIMALS”;

15 (2) by inserting “(a)” immediately before the first
16 sentence thereof;

17 (3) by amending the second sentence thereof by in-
18 serting after “Such standards” and before “shall in-
19 clude” the following: “shall apply with respect to the
20 facilities of any person licensed or registered pursuant to
21 this Act and with respect to any terminal facilities used
22 by a carrier subject to this Act and”; and

23 (4) by adding at the end thereof the following two
24 new subsections:

25 “(b) The Secretary shall promulgate standards in ac-

1 cordance with this subsection to govern the transportation in
2 commerce, and the handling, care, and treatment in con-
3 nection therewith, by carriers, of animals consigned by any
4 dealer, research facility, owner of a pet, exhibitor, operator
5 of an auction sale, department, agency, or instrumentality
6 of the Federal Government or of any State or local gov-
7 ernment, or other person. Such standards shall include, but
8 need not be limited to, minimum requirements with respect
9 to containers, feed, water, rest, ventilation, temperature, han-
10 dling, veterinary care, and other factors determined by the
11 Secretary to be relevant to assuring the humane treatment
12 of animals in the course of their transportation in commerce.
13 Such standards shall be designed to assure the safe trans-
14 portation in commerce of all animals received in healthy con-
15 dition and to safeguard such animals against disease, injury,
16 and death in the course thereof. The Secretary may revise
17 such standards to the extent necessary or appropriate. Such
18 standards may include a requirement that no animal of a
19 designated kind shall be—

20 “(1) delivered by a dealer, research facility, ex-
21 hibitor, operator of an auction sale, owner of a pet, or
22 by a department, agency, or instrumentality of the Fed-
23 eral Government or of any State or local government,
24 to a carrier, for transportation in commerce; or

25 “(2) received by a carrier, for transportation in

1 commerce, from any person or government entity de-
2 scribed in paragraph (1);
3 unless it is accompanied by a certificate issued with respect
4 to such animal by an accredited (as defined by the Secre-
5 tary) veterinarian. Each such certificate shall attest that
6 such veterinarian inspected such animal within a time in-
7 terval which shall be specified and that, when so inspected,
8 such animal appeared to be free of any infectious disease or
9 physical abnormality which might endanger such animal
10 or other animals during transportation in commerce. Any
11 such certificate shall be issued at a time interval, and shall
12 be retained by the receiving carrier for a reasonable period
13 of time in accordance with regulations of the Secretary.
14 “(c) No carrier involved in the transportation of any
15 animal in commerce shall participate in any arrangement,
16 or engage in any practice, under which the cost of the trans-
17 portation of such animal, or any other charges (including
18 the purchase price of any such animal), is required to be paid
19 and collected upon the delivery of such animal to the con-
20 signee, unless the consignor guarantees in writing the pay-
21 ment of transportation charges, including, where necessary,
22 both the return transportation charges and an amount suf-
23 ficient to reimburse such carrier for all out-of-pocket expenses
24 incurred for the care, feeding, and storage of any such animal
25 in the event that such animal is not claimed upon delivery.

1 *Such transportation shall be permitted by the carriers after*
2 *a period of twenty-four hours.”.*

3 *SEC. 10. Section 15 of such Act (7 U.S.C. 2145) is*
4 *amended by adding at the end thereof the following new*
5 *subsection:*

6 *“(c) In addition to other applicable requirements, the*
7 *Secretay shall consult and cooperate with the Secretary of*
8 *Transportation, the Administrator of the Federal Aviation*
9 *Administration, the Chairman of the Civil Aeronautics*
10 *Board, the Chairman of the Interstate Commerce Commis-*
11 *sion, and the Chairman of the Federal Maritime Commis-*
12 *sion with respect to the establishment and enforcement of*
13 *humane standards for animals in the course of their trans-*
14 *portation in commerce and in terminal facilities prior to and*
15 *after such transportation. Before promulgating any stand-*
16 *ard governing air transportation and related handling of*
17 *animals, the Secretary shall consult with the Secretary of*
18 *Transportation, and the Administrator of the Federal Avia-*
19 *tion Administration who shall have the authority to disap-*
20 *prove any such standard if he notifies the Secretary, within*
21 *thirty days after such consultation, that changes are neces-*
22 *sary in the interest of safety flight including the safety of the*
23 *aircraft, its environment, or its equipment. The Interstate*
24 *Commerce Commission, the Civil Aeronautics Board, and*
25 *the Federal Maritime Commission, to the extent of their*

1 *respective lawful authorities, shall take such action as is*
2 *appropriate to implement any determination by the Secretary*
3 *with respect to a person subject to regulation by it.”.*

4 *SEC. 11. Section 16(a) of such Act (7 U.S.C. 2146(a))*
5 *is amended—*

6 (1) *by inserting “carrier,” in the first sentence there-*
7 *of after the term “exhibitor”, each time such term appears*
8 *in such sentence;*

9 (2) *by striking out “or” before “(4)” in the third*
10 *sentence thereof;*

11 (3) *by inserting before the period at the end of the*
12 *third sentence thereof the following: “, or (5) such ani-*
13 *mal is held by a carrier”; and*

14 (4) *by adding the following new sentence at the end*
15 *thereof: “The United States attorneys are authorized to*
16 *prosecute all criminal violations of this Act reported by*
17 *the Secretary and to invite civil actions to enforce orders*
18 *of and to recover all civil penalties assessed and reported*
19 *by the Secretary, or which come to their notice or knowl-*
20 *edge by other means.”.*

21 *SEC. 12. Section 19 of such Act, as amended (7 U.S.C.*
22 *2149), is amended—*

23 (1) *by inserting after “exhibitor,” each time the term*
24 *appears the following: “carrier,”;*

19

1 (2) by striking out "one year" in subsection (c)
2 thereof and inserting in lieu thereof "six months";

3 (3) by amending subsection (a) thereof by striking
4 "violation, and if" and inserting in lieu thereof the fol-
5 lowing: "violation. The district courts of the United
6 States shall have jurisdiction to enforce any such order
7 by appropriate means. If";

8 (4) by amending subsection (c) thereof by inserting
9 "knowingly" after "who" and before "violates"; and

10 (5) by adding at the end thereof the following
11 two new subsections:

12 "(d) Any dealer, exhibitor, carrier, or operator of an
13 auction sale subject to this Act who is determined by the
14 Secretary, after notice and an opportunity for a hearing, to
15 have violated a provision of this Act or of a standard or
16 regulation prescribed pursuant to this Act, shall be liable to
17 the United States for a civil penalty. The amount of such
18 penalty shall be not more than \$2,000 for each violation, and
19 if any violation is a continuing one, each day of violation con-
20 stitutes a separate offense. The amount of any such penalty
21 shall be assessed by the Secretary by written notice. In deter-
22 mining the amount of such penalty, the Secretary shall take
23 into account the nature, circumstances, extent, and gravity
24 of the violation committed and, with respect to the person

1 found to have committed such violation, the degree of cul-
2 pability, any history of prior offenses, ability to pay, effect on
3 ability to continue to do business, and such other matters as
4 justice may require.

5 “(e) Any action under this section may be brought be-
6 fore a United States magistrate in the district court of the
7 United States in any judicial district in which such person
8 is found, and such magistrate shall have jurisdiction to hear
9 and decide such action.”.

10 SEC. 13. Section 21 of such Act (7 U.S.C. 2151) is
11 amended by adding at the end thereof the following two new
12 sentences: “Record-keeping requirements prescribed pursuant
13 to section 8, and standards promulgated pursuant to sub-
14 sections (a) and (b) of section 10, shall be prescribed or
15 promulgated in accordance with section 553 of title 5,
16 United States Code, except that interested persons shall be
17 entitled to make oral as well as written presentations. A
18 transcript shall be taken of any oral presentation.”.

19 SEC. 14. (a) Section 23 of such Act (7 U.S.C. 2153)
20 is amended by striking out the last sentence.

21 (b) Such Act is amended by adding at the end thereof
22 the following new section:

23 “SEC. 26. There is authorized to be appropriated to the
24 Secretary to carry out the provisions of this Act not to exceed
25 \$4,000,000 for the fiscal year ending June 30, 1976, not

1 to exceed \$1,000,000 for the transitional fiscal quarter end-
2 ing September 30, 1976, not to exceed \$4,000,000 for the
3 fiscal year ending September 30, 1977, and not to exceed
4 \$4,000,000 for the fiscal year ending September 30, 1978.”.

5 SEC. 15. Section 24 of such Act (7 U.S.C. 2154) is
6 amended—

7 (1) by inserting “and carriers” after the term
8 “dealers” in the third sentence thereof, and

9 (2) by adding after “of this Act” and before the
10 period at the end of the first sentence the following:
11 “, except that the regulations relating to carriers shall
12 be prescribed not later than nine months after the date
13 of enactment of the ‘Animal Welfare Amendments of
14 1975.’ ”.

15 SEC. 16. Section 25 of such Act (7 U.S.C. 2155) is
16 amended—

17 (1) by striking out “and” at the end of paragraph
18 (2) thereof;

19 (2) by redesignating paragraph (3) thereof as
20 paragraph (4) thereof; and

21 (3) by inserting therein the following new para-
22 graph:

23 “(3) recommendations and conclusions approved
24 by the Secretary of Transportation, the Administrator
25 of the Federal Aviation Administration and the Chair-

1 *man of the Civil Aeronautics Board, concerning flight*
2 *safety, including the aircraft, its environment, or equip-*
3 *ment as they relate to the carriage of live animals in air*
4 *transportation; and”.*

5 *SEC. 17. Section 16(c) of such Act (7 U.S.C. 2146c)*
6 *is amended by striking “, and the provisions of title II of*
7 *the Organized Crime Control Act of 1970 (62 Stat. 856;*
8 *18 U.S.C. 6001 et seq.),”.*

The CHAIRMAN. I think that substitution could take place on the floor following action by the House.

If we were basically adopting the Senate bill, it might be a little different; but there are substantial differences between the two versions, at least at this stage.

The record will note that 24 members, a quorum, were present at the time the bill was reported.

The Chair wishes to thank the members for their attendance.

The next meeting of the committee will be a briefing session on Wednesday afternoon, January 28, at 2 p.m. This will not be a formal meeting of the committee but, rather, a public gathering to discuss the impact of the current budget act on the work of the committee.

I think it is an extremely important meeting, and I would hope that all the members could attend. Members of the Budget Committee staff will be conducting the briefing and answering questions.

There are some extremely critical time limits which must be met this year with respect to budget action. For example, all authorizing legislation must be reported by May 15.

There will be no full committee business on Monday.

Instead, on Monday, Tuesday, and Wednesday, the Subcommittees on Conservation and Credit and on Rural Development will be meeting in joint session with the Senate subcommittee in the Russell Office Building.

Is there any further business to come before the committee?

Mr. SYMM. Mr. Chairman, how long do we have to file in subcommittee?

The CHAIRMAN. Since there is no great rush, would the gentleman like until noon on Wednesday? That is 4 days. Is that sufficient time?

Mr. SYMMS. Thank you.

The CHAIRMAN. All additional views should be presented to the committee by noon next Wednesday.

The committee will stand adjourned to meet at the call of the Chair.
[Whereupon, the committee adjourned at 2:30 p.m.]





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